

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



*NF*  
74-1550

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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NO. 74-1550

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THE UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
-against-  
CARMINE TRAMUNTI, et al.,  
Defendants-Appellants.

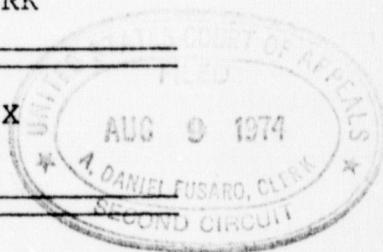
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DEFENDANTS-APPELLANTS' JOINT APPENDIX  
Vol. T(35) - Pages 4805 to 4958

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2       UNITED STATES OF AMERICA  
3                          vs.  
3       CARMINE TRAMUNTI, et al.

73 Cr. 1099

4

5                          New York, March 6, 1974;  
6                          9.30 A.M.

7

Trial resumed.

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(In open court, in the absence of the jury.)

10      THE COURT: Mr. Rosenbaum, you might as well go  
11      to the lectern now.

12      MR. ROSENBAUM: I apologize. I was detained get-  
13      ting down here.

14      THE COURT: All right.

15      (Jury present.)

16      THE COURT: All right, Mr. Rosenbaum.

17      MR. ROSENBAUM: Madam Forelady, Ladies and Gentle-  
18      men of the Jury, your Honor, counsel.

19      My name is Mr. Rosenbaum, as you know by now, and  
20      I represent the defendant Vincent D'Amico.

21      I am going to take possibly 45 minutes of your  
22      time now and ask you to please continue your undivided  
23      attention, because at stake is a man's life or 30 years of  
24      his life. I ask you, please, to exclude all others from  
25      your deliberation at this point and during the time that I

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2 speak with you and to focus your attention solely and  
3 exclusively on the case of the United States of America v.  
4 Vincent D'Amico as if he alone stood before you on trial.

5           Ladies and gentlemen, there are two acts in  
6 which Mr. D'Amico is accused and there are three  
7 individuals who testified against Mr. D'Amico.

8           I know in a trial of this magnitude where you  
9 have been hearing fact after fact after fact, dates, times  
10 and places lose an impact on you.       However, if Mr. D'Amico  
11 stood on trial alone, dates, times and places would be  
12 the most important aspect of his defense or any defense.

13           There are two particular important dates in this  
14 case as far as the defendant D'Amico is concerned, and that  
15 is November, 1972 -- a specific date in November is never  
16 mentioned -- and May 30, 1973.   Please during the course  
17 of my summation I plead with you, bear in mind those two  
18 dates.

19           There are three people who testified against Mr.  
20 D'Amico.   One, Mr. Frank Stasi, who, incidentally, took  
21 the stand in the early part of this trial -- please bear  
22 that in mind -- No. 2, an Officer Connally, and, No. 3,  
23 a Mr. Finn, who was the agent of the building in which Mr.  
24 D'Amico lived.

25           I ask you now to place yourself in a point of time

2 in the early part of May, 1973, or I should say about May  
3 23rd or May 22nd, 1973. And I ask you, please, to place  
4 yourself in the office of Frank Rogers and try to recall  
5 what happened on that day.

6 Mr. Stasi was arrested on or about May 22nd or  
7 May 23rd, 1973. Mr. Stasi was brought down to the  
8 offices of Frank Rogers on or about May 22nd or May 23rd,  
9 1973, and Mr. Stasi was convinced, either by promises or  
10 by threats of criminal prosecution, to give statements.  
11 And Mr. Stasi on May 23rd all the way through July of  
12 1973 admitted he lied to his interrogators.

13 Somewhere before May 30th, upon an inquiry by 10th, 11th,  
14 one of the investigators, Mr. tasi said that some time 12th, 13th  
15 before May 30, 1973, he sold to Vincent D'Amico -- in fact,  
16 he didn't know Vinnie's last name -- and please read the  
17 testimony -- a man named Vinnie, whose last name he did  
18 not know, two ounces of heroin and two ounces of cocaine.

19 Please bear in mind he says somewhere on or about  
20 May 25, 1973, he did not know Vinnie's last name.

21 And I believe as a result of his telling the  
22 police officers somewhere about May 25, 1973, he is wired  
23 up with a transmitter and he goes out with Officer Connally  
24 and two other officers on a fishing expedition based upon  
25 what he told the arresting authorities about his entangle-

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2 ment with various individuals.

3 I believe ultimately that night -- you will find  
4 out later on if you check the record -- he comes down or  
5 goes down to the Centaur Bar, engages in a conversation  
6 with Mr. D'Amico and I believe, if you recall, that the  
7 tape recorder wasn't functioning -- we will get into that  
8 later -- and nothing really transpires.

9 I believe after May 30, 1973, when the police  
10 officers or the interrogators were saying to Stasi, "You  
11 are a liar, we are not going to spend time and money on  
12 you unless you lie for us" -- and I will call to your  
13 attention, please check that testimony ~~as late as~~ July  
14, 1973, the interrogators say to Stasi that they are not  
15 going to spend a lot of time and money if you are not going  
16 to lie -- I believe after May 30, 1973, he changes his  
17 story about this November, 1972, situation in which he  
18 initially says he never knew Vinnie by his last name and  
19 he sold to Vinnie D'Amico two ounces of heroin and two  
20 ounces of cocaine.

21 What does the story change to? What does it  
22 become? It becomes now that he did not sell to Vinnie  
23 D'Amico two ounces of heroin or two ounces of cocaine,  
24 but a quarter of a kilogram of heroin. And the story  
25 changes in a lot of ways. - He knows Vinnie by the name

2 Rizzo. This is after May 30th.

3 As a result of some testimony before a grand jury,  
4 count 25 of this indictment is brought forth or the man  
5 is indicted, which says in the evening hours of November,  
6 1972, at the Pelham Log Cabin on Westchester Avenue in the  
7 Bronx, New York, a George Toutoian aided and abetted the  
8 delivery of a quarter of a kilo of heroin to Vincent D'Amico  
9 in exchange for \$7000, actual delivery was made by Frank  
10 Stasi.

11 Ladies and gentlemen, somebody testified to that  
12 before the grand jury, and that was Frank Stasi.

13 The quarter of a kilo of heroin, initially was  
14 two ounces, becomes a quarter of a kilo, \$7000 becomes  
15 involved and the name D'Amico appears.

16 I want us now to please focus our attention to  
17 the November, 1972, situation. This is where the critical  
18 date comes into being.

19 Frank Stasi is no fool. This man worked for  
20 the government in the Post Office. He knows dates, he  
21 knows times, he knows places. He is not as naive as he cares  
22 to let you believe.

23 On cross-examination, ladies and gentlemen, he  
24 says, or on direct examination by Mr. Phillips, that he went  
25 down to 56th Street or 57th Street, he does not recall the

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2 date on direct examination. He says he sees the name  
3 Rizzo on the doorbell, he knows Rizzo to be D'Amico, it's  
4 the same person, and yet before May 30th he doesn't know  
5 Vinnie's last name. And he goes to Apartment No. 2-B,  
6 because that's where Vinnie told him to go, and he sells to  
7 Vinnie D'Amico \$7000 worth of heroin.

8 Now, look, the government in their desperation,  
9 when they knew the truth would come out at least as to the  
10 name, as to the date, brings forth a man by the name of  
11 Mr. Finn, who sits at that stand looking as the most  
12 respectable businessman, and says to you and wants us to  
13 believe that in November or December, -1972, Vincent D'Amico  
14 lived at that address. at address.

15 I asked him, and this is not on direct examination,  
16 "Mr. Finn, how do you establish a November date or a  
17 December date?"

18 And he says to me in answer to my question that  
19 it was as a result of a piece of paper he gave to the govern-  
20 ment attorney, Mr. Phillips.  
21  
22  
23  
24  
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2 I asked, "Please, could you produce that  
3 paper?"

4 I didn't know about it up until that time.  
5 And that paper is produced to me and that paper is  
6 dated January 25, 1973.

7 And I say to Mr. Finn, "A paper dated January  
8 25, 1973, does that recollect or help you in your recol-  
9 lection as to what date Mr. D'Amico lived in that  
10 building?"

11 And he said, "Yes."

12 But then we proceed on cross examination.

13 He does not know that Vinnie D'Amico has the lease to  
14 that apartment and he doesn't know that February 1, 1973  
15 is the date of that lease, the commencement of that lease,  
16 and even when he is confronted with that fact and I say  
17 to him, "Mr. Finn, would you put the name Rizzo on the  
18 doorbell before the execution of a lease?" he says,  
19 "Maybe, although it would not be customary."

20 Only under persistent cross examination does  
21 he admit it would be on or about February 1, 1973 that he  
22 puts the name Rizzo on the doorbell.

23 I don't know what motivated the  
24 man initially, but the truth is that the name didn't go  
25 on the doorbell until February 1, 1973. I will go

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2 one step further.

3 I believe if Mr. Rizzo entered into the  
4 occupancy of that apartment on February 1, 1973, that  
5 that man, Mr. Finn, on that date did not run to put that  
6 name Rizzo on the doorbell, that probably a week thereafter  
7 transpired that that name appeared.

8 I am going to have you look at this lease.  
9 I am going to submit it into evidence. It has been  
10 submitted into evidence. You can take it to the jury  
11 room and use it as to date.

12 The government, on the other hand, when I  
13 asked for that piece of paper which I tell you is dated  
14 January 25, 1973 and which contained an assignment of the  
15 security of the previous tenant to Mr. D'Amico or to  
16 Mr. Rizzo, that paper is not in evidence because that  
17 paper couldn't refresh anyone's recollection, anyone's  
18 recollection that the name or that the tenant Rizzo was  
19 in that building before at least January 25, 1973.

20 Let me go one step further.

21 I asked Mr. Finn -- Mr. Finn tries to pull out  
22 of it. The name Rizzo on the doorbell, incidentally,  
23 is a very critical issue here. He tries to pull out  
24 of here by saying, "D'Amico lived in the building prior  
25 to the execution of this lease.

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2 Please, if you recall, recall on cross examina-  
3 tion I asked him, "Mr. Finn, do you live at this address?"

4 I said, "Is your office at that address?"

5 He said no.

6 I said, "How often do you go into that build-  
7 ing?"

8 And I believe his testimony was three times  
9 a week or four times a week an hour a day. And he final-  
10 ly admits that in January, 1973 he never went into that  
11 apartment, so D'Amico just didn't live there. He  
12 didn't see D'Amico in the building in January, 1973, he  
13 said, "Maybe I saw him once." "Maybe I saw him once.. . . . .

14 He doesn't recall December, 1972 and does not  
15 recall November, 1972 ever seeing D'Amico in that build-  
16 ing.

17 Ladies and gentlemen, going back to the trans-  
18 action, the alleged transaction, Mr. Stasi says a few  
19 days or a day before he made this alleged delivery of  
20 \$7000 worth of heroin to Mr. D'Amico he had carte blanche  
21 authority from Mr. D'Amico to buy any or to deliver to him  
22 any amount of heroin. But Mr. Stasi also wants you  
23 to believe that D'Amico had untold resources available to  
24 him to purchase heroin.

25 But, you know, when I asked Mr. Stasi, "Were

2 you ever to the apartment that was rented by D'Amico  
3 before D'Amico rented that apartment?"

4 He ultimately said yes, he was.

5 And I asked him for what purpose. He  
6 didn't remember.

7 And I said to him, "Wasn't it for the purpose  
8 that Mr. Mr. D'Amico purchased the furniture from the prior  
9 tenant and wasn't it for the purpose that you went with  
10 the prior tenant to collect \$50 or \$70 at a clip from  
11 Mr. D'Amico to buy off or to pay off for the previous  
12 furniture which he bought?"

13 I submit to you that a man who is paying off  
14 on installments \$50 and \$70 a clip, as my recollection  
15 of the testimony is, or on installments, does not have  
16 money the way Mr. Stasi would have you believe to pur-  
17 chase heroin. This man was a poor man. D'Amico was  
18 a poorman. That building was a bad building, as far  
19 as the way it was -- the area it was in and the way it  
20 was -- the age of the building.

21 Then I asked Mr. Stasi about this transaction.  
22 "Tell me, Mr. Stasi, how were you paid your money? Was  
23 it big bills, small bills?"

24 "I don't remember. It was big bills, it was  
25 small bills," that was his answer,

2 He also says to me on my examination that that  
3 was his only sale of heroin or narcotics. I submit to  
4 you if that were his only sale or if that sale ever took  
5 place, and I tell you it never took place, he would  
6 know more than to lead you to believe he didn't know the  
7 denominations, \$100 bills, \$10 bills, \$5 bills, it's  
8 inconceivable.

9 Now, I say to you that his story about this  
10 November, '72 alleged transaction as a result of a May 30,  
11 1973 fishing expedition by Mr. Stasi and officer Connelly,  
12 where they went down from Federal Plaza or from Police  
13 Headquarters where Mr. Stasi was taped up, where Officer Connelly  
14 had certain types of receiving devices and transmitter  
15 where nothing occurred that day, they wanted Stasi to lie.

16 This Officer Connelly says at 8:30 in the  
17 evening -- I tell you to please look at the testimony very  
18 carefully, that there is only one instance and one  
19 instance alone where it is said that Mr. Stasi had a  
20 conversation with Mr. D'Amico in the Centaur, just one time,  
21 and this time was when Mr. Stasi was wired up with tapes,  
22 whne he was under surveillance by Officer Connelly, by Offi-  
23 cer Connelly's partner, and we believe by Sergeant O'Boyle.

24 Officer Connelly says when he left Federal  
25 Plaza at 8:30 at night his transmitter was garbled.

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2 He did not get to the Centaur Bar for more than three  
3 hours after he left, after he left Federal Plaza with  
4 Mr. Stasi. The purpose for them to go on this investi-  
5 gation was to get information and ultimately to make  
6 arrests as a result of narcotics conversations or conver-  
7 sations with reference to narcotics.

8 I can't believe, ladies and gentlemen, that a  
9 major narcotics investigation that starts at 8:30  
10 at night, and that three members of that investigation  
11 unit are going to permit a transmitting device, which is  
12 the essential aspect of that investigation, not to  
13 function properly. And I can't believe that Officer  
14 Connally just turned the squelch button in an attempt  
15 to fix that reception. I believe that that transmitter  
16 worked and I believe that the reception was good, and  
17 I believe that the truth of what occurred on May 30th  
18 are now inside the garbled tapes in Police Headquarters,  
19 because either Officer Connally is so inept in his duty  
20 that his tape recorder does not work on a major  
21 investigation and it is the same Officer Connally whose  
22 camera, whose camera didn't develop proper pictures on  
23 another instance, I can't believe that Officer Connally  
24 would be continued in a major narcotics task force investi-  
25 gation. I believe these things worked and I believe

2 in order to cover up defects -- I am sorry; in order to  
3 cover up what was not a defect in a tape he didn't tell  
4 the truth as to what occurred that night and that the  
5 truth as to what occurred that night would have been on  
6 a proper tape and that tape by law is required to be  
7 given to me as defense counsel before this trial and all  
8 I was told was that those tapes were garbled, and you  
9 were told the same thing.

10 In absence of the tapes, your Honor, in ab-  
11 sence of those tapes, we have testimony by Mr. Stasi  
12 as to what occurred on May 30, 1973 and Officer Connelly.  
13 Ladies and gentlemen of the jury, the two testimonies  
14 are totally different. If I may just bring out some  
15 of the inconsistencies in this matter.

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2                   Stasi says that he went down to Pleasant  
3                   Avenue, he engaged in a conversation with a man by the  
4                   name of Moe Lentini and he went with Moe Lentini  
5                   inside à Barone's Bar.

6                   Connelly saysd that Stasi engaged in a con-  
7                   versation at Pleasant Avenue with Moe Lentini outside  
8                   Barone's Bar.

9                   It is not too important, but it means some-  
10                  thing. Don't forget, please, that inconsistencies go  
11                  to the credibility of witnesses.

12                  And ultimately that night, at about 11 o'clock  
13                  or 11:30, Connelly gets in the Centaur Bar beforeen the Centaur  
14                  Stasi arrives there with his broken receiver, his in-  
15                  operative, his garbled tape recorder, which he knew  
16                  was inoperative at 8:30 at night, and he says, that's Con-  
17                  nelly, that D'Amico walks into the bar, sits down with  
18                  Mr. Stasi and ultimately goes to the back of the bar,  
19                  disappears for a few minutes, and that subsequently Stasi  
20                  and D'Amico leave or come back from the rear of the  
21                  bar, and Stasi stays with D'Amico a few moments and  
22                  leaves.

23                  I asked him, "Was there any other man involved  
24                  in the conversation?"

25                  "I don't remember, I don't think so."

2 I asked Officer Connelly, "Did Stasi drink  
3 that night?"

4 "I don't think so," which we will go into a  
5 few minutes later.

6 Stasi says that he went into the bar, he saw  
7 D'Amico, sat down and had a few drinks with D'Amico, has  
8 allegedly a discussion about the purchase of narcotics,  
9 goes to the rear of the bar, that's D'Amico goes to the  
10 rear -- I'm sorry -- makes a telephone call, and  
11 subsequently a man by the name of Ralph comes down and a  
12 conversation takes place between the three of them.

13 That again is the heart of the investigation  
14 that night. That is the basis of the investigation that  
15 night, because Stasi says that the conversation between  
16 this third party whose name was Ralph and D'Amico and  
17 Stasi referred to narcotics. Officer Connelly  
18 said he didn't even see three people, three males,  
19 talking. And I say to you again I believe that the tape  
20 would indicate whether or not there were three people or  
21 two people and whether or not the conversation had  
22 anything to do with narcotics.

23 Officer Connelly also says, incidentally,  
24 that when he left that evening -- I said, "Officer, why  
25 didn't you get your tape recorder or your receiving device

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2 fixed?"

3 He said, "I was by myself. I was alone.

4 I couldn't do it. It was hard to get tape recorders  
5 or Kel receivers."

6 "Well, weren't you with anybody?"

7 Ultimately he said, "Yes, I had a partner."

8 "Well, why didn't your partner go?"

9 No reason. Then we find out at the end  
10 of the evening not only two officers, but three  
11 officers, three police officers. It is inconceivable,  
12 inconceivable, that that tape did not work that night.

13 I want to go even one step further. ever Stasi step  
14 also saysd that when he spoke with D'Amico that night,  
15 he was going down there, down to the Centaur, to arrange  
16 for the sale of narcotics to D'Amico, and on cross  
17 examination, to show you the vindictiveness of this man  
18 Stasi, he says to me that he spoke with D'Amico and  
19 D'Amico gave him pouches that night of cocaine.

20 Here Stasi wants you to believe that he is  
21 going down to the bar to sell narcotics, cocaine, to  
22 D'Amico and ends up with a pouch.

23 Officer Connelly did not say, incidentally,  
24 when Stasi left the bar that he checked to see whether  
25 or not Stasi had a pouch.

2 It just wasn't true. Stasi was just lying.  
3 He is an angry, vindictive man, and he also is trying to  
4 please the government.

5 Incidentally, ladies and gentlemen, if that night  
6 Vincent D'Amico gave to Mr. Stasi cocaine, pouches  
7 of cocaine, Mr. D'Amico would have been arrested that night  
8 for transferring or selling or delivering or possessing  
9 cocaine. But he was not arrested that night.

10 I will even go one step further. If what  
11 Stasi said was true, if what Stasi said was true, wouldn't  
12 it be a logical followup that the police would con-  
13 tinue surveillance of Vincent D'Amico to see his activi-  
14 ties?

15 Now, I submit either one of those things occurred.  
16 Either the police knew Stasi was lying about what  
17 transpired that night with Vinnie D'Amico or -- and they  
18 knew it because the tapes were working -- or if they  
19 believed him a surveillance would have continued on  
20 Vinnie D'Amico. And nothing else is brought forth.  
21 No further conversation with D'Amico, no further sur-  
22 veillance of D'Amico. It was absurd.

23 Now, I would like to go into the motives of  
24 Stasi, why he would lie. Frank Stasi is the dregs  
25 of society. Frank Stasi is a man that the prosecution

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2 is telling you you would not want in your home. Frank  
3 Stasi is a man that we wouldn't even want to walk the  
4 streets. He is a liar. He is a convict. He is a  
5 user of cocaine for no less than \$250 or \$300 a week.  
6 He is a man who at 53 years of age three or four times a  
7 week goes down to bars looking for hookers and prosti-  
8 tutes. He is a man who can consume 10 drinks a night  
9 and snort cocaine and say, "I have no effect by it."  
10 He is a man who was fired from the post office, the  
11 United States Post Office, for not working or taking  
12 numbers, I believe, at that time. He is a man who is  
13 indebted to other people in excess of \$40,000. He  
14 is a man to start with who is a liar, and all he needs is  
15 a little encouragement to be more than a liar. He is  
16 a man who is married and het three ot four nights a week  
17 looks fo a hooker. He is a man who has children  
18 and he himself snorts cocaine and drinks 10 drinks or  
19 more a night. He is a man who at 53 years of age goes  
20 down to bars and gets into fist fights.

21 And that is the man who the government wants you  
22 to convict Vincent D'Amico on. I say it will be a  
23 sad day in the annals of American jurisprudence if a  
24 liar can take the stand and convict an innocent person.

25 Ladies and gentlemen, when we were brought up,

2 when we were brought up, our parents told us to tell the  
3 truth. They taught us to tell the truth. They repre-  
4 manded us when we lied. That was a basic understanding  
5 the way we were brought up. We were punished if we lied.  
6 And we who are parents today tell to our children,  
7 "Tell the truth or I am going to punish you."

8 I plead with you, I ask you, don't reward  
9 Frank Stasi with a pot of gold because he lied at the  
10 expense of an innocent man, Vincent D'Amico.

11 Thank you.

12 THE COURT: All right, Mr. Marshal.

13 (The jury left the courtroom.)

14 THE COURT: Mr. Rosenberg I guess is next.

15 MR. ROSENBERG: Yes.

16 THE COURT: All right.

17 (Recess.)

18 (In open court; jury not present.)

19 THE COURT: I came out without the jury for  
20 a reason. I tried to make clear at the start of the  
21 summations that I was going to avoid interfering with the  
22 summations as long as people stayed within the record and  
23 stayed away from Watergate and so on. The only time  
24 I interfered at all was with the Watergate allusion.

25 Let me remind you once again to stay within

2 the record and make sure you talk about the credibility  
3 of witnesses without getting into your own credibility.  
4 I must admit there have been times when I have been  
5 tempted to do something, but I guess I am a patient  
6 guy. I request, however, most sincerely, that you don't  
7 force me to do something, because I don't think it  
8 helps you and I don't think it helps your client.

9 MR. CURRAN: Your Honor, one other point.  
10 I submit that it is improper for defense counsel to talk  
11 to the jury in terms of there being 15 years at stake, 30  
12 years at stake.

13 THE COURT: Oh, yes. That is another  
14 thing I wanted to take up. I will cover it in the  
15 charge, but for gosh sakes, you gentlemen know that  
16 sentence is something which the jury is not involved in  
17 and it is something that really should not come up in  
18 summation.

19 By the way, somebody remarked about something  
20 and said, "That wasn't even offered in evidence." I  
21 almost asked, "You want to offer it now? We will take  
22 it."

23 That is the kind of thing that can destroy you  
24 in front of a jury. I am telling you.  
25

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2                   Sticking your own credibility on the line, I  
3 think the next time it happens I am going to suggest maybe  
4 you would like to be sworn. It can be a disaster.  
5 I will tell you, there is a proper way of doing it and there  
6 is a way that can cause confusion. I have attempted  
7 to avoid it. I didn't even put in when I thought that  
8 you were saying something backwards. If you check  
9 the record of the last couple of days you will find  
10 that you said a couple of things backwards.

11                  But please, do the best you can to stay within  
12 the record. Argue the heck out of the record. That  
13 is what you are supposed to do. Don't wander outside  
14 of it, because I would hate to in any way affect either you or  
15 your client by stopping you.

16                  All right. Bring back the jury.

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1 hpl

2 (Jury present.)

3 MR. ROSENBERG: If your Honor please, gentlemen  
4 at the government's table, gentlemen of the defense, Madam  
5 Forelady, Ladies and Gentlemen of the Jury:

6 At the outset I sincerely want to thank each and  
7 every one of you and commend you for the efforts that you  
8 have made in this matter and in your devotion to your  
9 civic duty. It's most unusual when you can find jurors  
10 like yourselves to give up their loved ones, their homes,  
11 their familiar surroundings, and come to do a job, and  
12 you are to be commended. All I ask is that you do the job  
13 consistent with the laws that are laid down in this state.  
14 Now, as was explained to you before, on our summations,  
15 the summations of the defense, we can only anticipate what  
16 arguments the government is going to make. They in turn  
17 can answer every argument that we put forth. And I suppose  
18 the reason for that is that on behalf of the defense there  
19 is an ally that they are supposed to have and that is a  
20 presumption of innocence.

21 Now, it has often been said in a narcotic case  
22 there is no such thing as a presumption of innocence.  
23 But I don't believe this is the ordinary type of a jury  
24 and I believe that when the time comes you are going to  
25 take the law from his Honor as he gives it to you and you

1 hp2

2 will follow the law.

3 As they sit there right now, throughout the sum-  
4 mations, throughout the entire trial, throughout the  
5 Judge's charge to you, they are presumed to be innocent.  
6 That presumption of innocence is taken with you to the jury-  
7 room and you equate the evidence against that presumption  
8 of innocence.

9 The burden is upon the government to prove -- and  
10 I repeat, to prove -- the guilt of the defendants beyond  
11 a reasonable doubt. Now, a doubt is something which may  
12 come from the evidence or from the lack of evidence in this  
13 case.

14 I know it's very difficult to listen to testimony  
15 coming in without getting certain impressions and certain  
16 feelings. But his Honor throughout the entire trial and  
17 especially at the end of the day on Friday, when all the  
18 evidence was in, told you do not form a conclusion at this  
19 point. Now, if you are in a political discussion with  
20 somebody you are perhaps more concerned with the argument  
21 that you want to give him so that you are not listening to  
22 the argument he wants to give to you. So I ask you out of  
23 respect to ourselves to listen with an open mind. That is  
24 what they are entitled to. I am not asking for any more  
25 or any less.

1 hp3

2           These constitutional safeguards, presumption of  
3           innocence, the fact that the government must prove the  
4           guilt by clear and convincing testimony from that stand,  
5           were not made for these defendants alone. They were made  
6           for everybody that comes into this courtroom and says  
7           "I am not guilty. Give me justice."

8           The moment one juror takes less than what is  
9           required of the government to prove then that's the  
10          beginning of the end of our democratic process. And I will  
11          tell you what our future is going to be after that. You  
12          get an ambitious U.S. Attorney, they have a hate list,  
13          he gets a Barnaba, he gets a Pannirello, and makes a charge  
14          of narcotics, and a man like Barnaba gets up and says "I  
15          bought narcotics from you, it was in June or July, maybe  
16          it was August or September, but now that you tell me about  
17          it, it could have been May. But it happened. Take my  
18          word for it."

19           I ask you, if the charge was made against you  
20          can you possibly defend yourself against such an accusa-  
21          tion without the narcotics? Barnaba said, "I bought the  
22          narcotics from you," and that is where you would be sit-  
23          ting, and let me see whether or not you could possibly  
24          defend yourself against the charges.

25           So what is the important thing? Did they tell

1 hp4

2 a clear and convincing story.

3 Barnaba. "I may have dealt in narcotics all  
4 my life. I might have deserted my country in time of  
5 war. I might have been guilty of other felonies.  
6 I might be facing a hundred years on these charges.  
7 I might be getting a few dollars from the government to  
8 sustain myself in the meantime. I might be getting a  
9 few more dollars after my testimony so I can leave the state  
10 and maintain myself until I make other contacts. But one  
11 thing I want you to believe. I would not lie. Besides  
12 this, this was going to be my last sale anyway."

13 Barnaba said it, "I won't lie on the stand.  
14 It was my last sale." Pannirello said it, Dawson said it.

15 I ask you at this juncture just to analyze.  
16 Doesn't it seem that these are the dictates of one mind,  
17 where three people were dealing in narcotics, one for all  
18 his life, will get on the stand and all of them say, "This  
19 was my last sale, take my word for it, and I would not lie."  
20 Doesn't it appear that way, that somebody is pulling the  
21 strings with respect to that kind of testimony?

22 Now, the government, Mr. Phillips might say to  
23 you, "Well, I would have preferred a better class of people  
24 to come in here, but I have to deal with what I got."

25 No good. They got Barnaba, right, they got

1 hp5

2 him with narcotics on a sale to an undercover agent. They  
3 got Pannirello, right, with narcotics in his hand on a sale  
4 to an undercover agent. They got Dawson the same way.  
5 And what do they do? They come in and say, "No, I sold  
6 to you."

7 Before you can convict the defendant the testimony  
8 must be clear and convincing. It must be credible. It  
9 must be believable. Because otherwise Barnaba can say,  
10 "Your brother, your father, your wife, your friend, your  
11 uncle, I sold it to them," and that's what they would be  
12 sitting.

13 This is the last outpost of the democracy, the  
14 jury. Take less than what you would take if somebody  
15 was close to you for the government to prove, do not hold  
16 the government to our constitutional safeguards, and I say  
17 to you that you have done a greater injustice to this  
18 country than Barnaba by his desertion. All I am asking  
19 for is what we are entitled to have, no more, no less.

20 Now let's get down to the three witnesses that  
21 testified with respect to this defendant. I asked certain  
22 questions of Barnaba, Pannirello and Dawson with respect to  
23 how many people they spoke to, how long did it take them,  
24 and I think they averaged out 50 hours. Barnaba was  
25 questioned by government agents over a period of time for

1 hp6

2 a total of 50 hours.

3 They are entitled to prepare their case. There  
4 is no doubt about that. But 50 hours. If Barnaba wants  
5 to testify that "On several occasions I had narcotic  
6 transactions with Butch Pugliese, this was the time and  
7 this was the date," does this take 50 hours?

8 But be that as it may, on direct examination,  
9 direct examination, after 50 hours of preparation, Barnaba  
10 tells you Butch Pugliese introduced him to Pat Dilacio  
11 and Harry Pannirello. He gives us dates of narcotics  
12 transactions and he also goes on to say that Butch Pugliese  
13 shot Paulie the Arrow.

14 Now, he attempts to tell you that he has that kind  
15 of a recollection of the dates, of the transactions, it  
16 was July, it was December, '71, it was '72, it was earlier  
17 than that. But on cross-examination I asked him a few  
18 questions.

19 "How did you support yourself in 1955 and 1956?"  
20 "I don't remember."

21 I asked him, "In 1961, when you got out of jail  
22 for the second time or the third time" -- who remembers with  
23 him -- "did you support yourself by the sale of narcotics?"

24 His answer, "I don't remember."

25 He doesn't remember Frank Rogers telling him he

1 hp7

2 is facing 50 years on this case.

3 I asked him, "Are you receiving any consideration  
4 for your testimony? "

5 "No, I am not."

6 But after being arrested by Frank Rogers' office  
7 he was permitted to go out into the street. No charge was  
8 made against him at that time. He was not indicted in  
9 this case. And a year after that Frank Rogers puts the  
10 charge on him and holds him in a thousand dollars bail when  
11 he is facing 50 years in jail. Presently he is getting  
12 \$400 a month plus his rent, and Lieutenant Whalen out of  
13 Frank Rogers' office told him he will not go to jail and  
14 he will be able to go anywhere he wants. But he says,  
15 "I didn't get consideration for my testimony."

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3A    2                 All right, let's find out. Even a Barnaba can  
3                 be telling you the truth, but let's find out if it is  
4                 possible. Does it make sense to us?

5                 In 1973 Barnaba wrote down on a piece of paper  
6                 what he said took place between he and Pugliese in 1970.

7                 Now, he is wired up, he goes out into the field,  
8                 he wants to produce for Rogers. That means his life. He  
9                 has a wire on him. He meets Pugliese. Does he come back  
10                with one narcotic transaction between he and Pugliese?

11               No.

12               If he really had something on Pugliese, couldn't  
13               he go back and discuss what took place in 1970 -- or was it  
14               '71? --what took place in what he said occurred in October,  
15               November, reminisce, get something on wire, something  
16               tangible to bring back to Frank Rogers because it means  
17               your life?

18               You spoke to Pugliese, you have the wire on.  
19               He comes back with nothing.

20               If I represented a Barnaba who got caught with  
21               drugs and he was facing the kind of time that he was facing  
22               and he wanted to cooperate, the most important thing that  
23               he can give to the government or to the state would be the  
24               supplier. This is the most important thing that he can  
25               produce for them.

1 tp2

2 Now, I walk into the District Attorney's office,  
3 he wants to cooperate.

4 "Who is your supplier?

5 "Well, he's not around at the time. Maybe he's  
6 dead."

7 His supplier was Carmine Pugliese, Butchie's  
8 brother, but Carmine Pugliese is not around, and if he said  
9 that it was Carmine and he's not around, well, "Barnaba,  
10 it's too bad, you got to do your own time, because you got  
11 nothing to give us. You haven't given us a supplier that  
12 we can prosecute, he is not around."

13 So whatever he did with Carmine Pugliese, he put  
14 Butchie's name into it.

15 Barnaba tells us that Pugliese had several nar-  
16 cotic transactions with him. Barnaba tells us that  
17 Pugliese introduced him to a supplier where he purchased,  
18 he took and sold to other people that paid him.

19 I asked him, "Did Pugliese make any money for  
20 these introductions?"

21 Answer, no.

22 He would have you believe that a man involves  
23 himself in a narcotic conspiracy where he could spend the  
24 rest of his life in jail, but didn't make any money. For  
25 what reason is he doing it?

1 tp3

2           But Barnaba is doing it for a reason. Because he  
3 can't produce Carmine at this time, so Butchie has to be  
4 there.

5           Even Barnaba tells you that Butch Pugliese was  
6 a hard-working man. He was a construction foreman. And  
7 when he needed work, he went to Butchie and Butchie got him  
8 a job and Butchie got him his book. You don't become a  
9 construction foreman overnight, you work at it, and you  
10 don't work as a construction foreman and do that kind of  
11 hard labor if you were making forty or fifty thousand and  
12 twenty thousand and ten thousand on a transaction. They  
13 are just too inconsistent. These people don't work.  
14 People who deal in narcotics, Barnaba, Pannirello, Dawson,  
15 they don't work. But they want you to believe that Butchie,  
16 the supplier, he's out working every day for forty or fifty  
17 dollars.

18           Barnaba also told you that Butch Pugliese shot  
19 Paulie the Arrow.

20           I asked him, "Did Paulie the Arrow tell you  
21 that?"

22           No. This is something that Barnaba said that  
23 Butchie said so that he could be knowledgeable and come  
24 down.

25           I am not quite sure, my recollection is not quite

1 tp4

2 certain, I don't want to go into something that I am not  
3 certain of, but my recollection, which is not binding on  
4 you, it is your recollection, was that Barnaba said he  
5 doesn't even know Paulie the Arrow. I may be wrong on  
6 that, but what I do recall is Barnaba saying that he did  
7 not find out from Paulie the Arrow that Butchie shot him.

8 Barnaba tells you about a transaction which took  
9 place at Tardi's where Barnaba on direct examination said,  
10 "I delivered heroin," and that was because of Butch Pug-  
11 liese and one other defendant.

12 I asked him, "Do you know for a fact that it was  
13 heroin?"

14 The answer was, "No, I don't know."

15 But on direct examination to prove he was know-  
16 ledgeable he said it was heroin.

17 So much for the credibility with respect to  
18 Barnaba. Now let us go on to the next gentleman, Panni-  
19 rello.

20 Pannirello on direct examination, he came to  
21 Butchie in 1970, would do anything for money, "Butchie gave  
22 me seven-eighths, I was the stash, I held it."

23 Later on he's now taking the narcotics from Butch  
24 Pugliese, he is no longer the stash. Now Butchie is the  
25 stash and he is giving it to him.

1 tp5

2                   He tells us of a three-way partnership, Butch  
3 Pugliese, Pat Dilacio and Harry Pannirello. He tells us  
4 that the agreement was supposed to be \$500 each per month  
5 draw.

6                   He also tells us that when Butch Pugliese went to  
7 jail, he left him with \$50,000 in money and goods.

8                   On direct examination it is a beautiful story that  
9 comes out. On cross-examination it comes out a little bit  
10 differently. And these are the things that I want you to  
11 infer, these are the things that I want you to deliberate  
12 about.

13                  One other thing that he told us on direct examina-  
14 tion was that Butch Pugliese was also known as Georgie.

15                  Now, cross-examination he tells us he has a bad  
16 memory for dates. He doesn't recall when he spoke to  
17 Phillips. He doesn't recall when, in fact, he took a  
18 plea.

19                  He tells us during the months of November and  
20 December of '71, because Butchie had left two kilos plus  
21 \$8000 and then they were selling during that period of time  
22 to other people, they were moving along pretty good, they  
23 had a lot of money. Yet in December of 1971 he was to go  
24 to Carmine Pugliese -- this is elicited on cross-examination,  
25 not on direct -- and ask him to "front us for narcotics

1 tp6

2 because we got no money," which, in effect, belies what  
3 he had told us on direct examination.

4 The very junk, the very narcotics that he was  
5 caught with was Carmine Pugliese's. That admits.

6 With respect to this alleged business partnership,  
7 according to what he tells us on direct examination the  
8 partnership was that he, Pannirello, was supposed to be the  
9 delivery man and Dilacio was supposed to be the contact man.

10 He then brings his brother and brother-in-law  
11 into the business. Right?

12 "Did you speak to your partner Butch Pugliese about  
13 bringing your brother or brother-in-law into the business?

14 "No.

15 "Well, wasn't that supposed to be your job?

16 "Yeah, but I acted on my own.

17 "Did you discuss with Butch Pugliese the fact that  
18 you had a new payroll?

19 "No.

20 "Did you ever send any money to Butch Pugliese?

21 "No.

22 "Did you ever send any money to his wife?

23 "No."

24 But it's a partnership. All right? And the one  
25 thing that shocks your intelligence that you cannot accept

1 tp7

2 as a partnership was on a sale to Tennessee Dawson, they  
3 took down \$16,000, they whacked up four thousand each --  
4 do you recall that? Four thousand each. Butch Pugliese  
5 was still home. He wasn't in jail.

6 "What about your partner Butch Pugliese, did you  
7 give him a dollar from this transaction?

8 "No.

9 "Did you discuss it with him?

10 "No. "

11 Okay. Butch Pugliese comes home in March or  
12 April of 1973 on a furlough from jail.

13 "Did you go to your partner, you left us with  
14 \$50,000, this is what you did since that time, this is what  
15 we spent, this is what we earned, this is what we" -- no,  
16 never even went to him.

17 I know if I had 50,000 in the street and I came  
18 home, I'm going to find out what happened to my investment.  
19 They never even seen each other. And when Pannirello got  
20 pinched he went to Dilacio, his partner, Carmine Pugliese,  
21 his supplier, "Give me help."

22 "Did you go to Butchie?

23 "No."

24 Now I ask you, was he his partner? Does it make  
25 sense? Is it credible? Is it believable that he was his

1 tp8

2 partner? But if he doesn't say it, how is he going to stay  
3 out of jail? So whatever he did with Carmine Pugliese,  
4 Butch Pugliese. "This way we got a shot to stay out of  
5 jail, because no way, no way can I stay out if I tell them  
6 I dealt with Carmine, who they cannot prosecute because he's  
7 not here."

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The next one that testified against Butch  
3 Pugliese was Tennessee Dawson.

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Now, I tell you this. I may not be able  
5 to explain it too well to you, but if you understand the  
6 manner in which I explain it to you, Tennessee Dawson  
7 you could eliminate from your deliberation. Now please  
8 try to follow me and I will try to explain it to you.

9

Tennessee Dawson tells us that he drove around  
10 Harlem with Butch Pugliese and made pickups with money and  
11 narcotic transactions and that he knows Butch Pugliese  
12 as Georgie and that he, in fact and in truth, had told  
13 it to Agent Logan.

14

I then showed him all the interview sheets  
15 that he had with Agent Logan. I said, "Look at it.  
16 Does it say that Butch Pugliese and Georgie were one and  
17 the same? Does it reflect that Butch Pugliese and  
18 Georgie were one and the same according to what you tell  
19 us now that you had discussed with Agent Logan?"

20

His answer was, "No." However, he does say  
21 that in October, "I told it to Mr. Phillips. In  
22 October of '73 I told Mr. Phillips that Butch Pugliese  
23 and Georgie were one and the same."

24

Okay. Now, this is the part I want you  
25 to follow.

1 gta2

2 He alleges that Butch Pugliese and Georgie are  
3 one person. He told it to Phillips in October.

4 He did. He told Phillips in October about a Georgie.

5 Now, what happens after he tells us?

6 Butch Pugliese gets indicted as Butch Pugliese. At the  
7 end of December the government sends us a supplemental  
8 bill of particulars listed as an additional co-conspirator,  
9 No. 1, Harry Pannirello; No. 2, John Doe, also known as  
10 Georgie. There are no two Georgies. The Georgie that  
11 they are referring to in that supplemental bill of particu-  
12 lars was the information given by Tennessee Dawson, Georgie.

13 Butch Pugliese is indicted. The  
14 inference to be drawn is that they are two different  
15 people.

16 I called Mr. Curran to the stand to explain  
17 this inconsistency.

18 "To tell you the truth, I didn't look at the  
19 supplemental bill of particulars until just this morning;  
20 Phillips."

21 I call Mr. Phillips to the stand.

22 "To tell you the truth, I didn't speak to  
23 Tennessee until December; Fortuin."

24 What is it, don't they talk to each other?  
25 Don't they talk to each other? It was a mistake, is

2 that what they want you to believe? Well, it  
3 wasn't a mistake. Because you know what happened after  
4 that? I took out the very interview sheet that he had  
5 with Tennessee Dawson, "Okay, do you see the name Georgie  
6 there?"

7 And what did he have the nerve to tell you?

8 "It does not refresh my recollection."

9 I tell you this, when the frustration wells up  
10 in you and Butch Pugliese got up and yelled at Tennessee  
11 Dawson, it was more to be believed than Mr. Phillips saying  
12 "It does not refresh my recollection."

13 Two other people testified with respect  
14 to the defendant, Mr. and Mrs. LaSalata. That was the  
15 one they called Joe Sharp, Mr. Joe Sharp.

16 He tells us that in October a garage was rented  
17 by Butch Pugliese, and I can believe that Butch Pugliese  
18 will do a favor. But from the fact that the garage  
19 was rented they want you to infer that in fact in those  
20 packages was narcotics, but more important that Butch  
21 Pugliese knew it was narcotics. You can't guess.  
22 This is not a guessing game. It requires proof.

23 Was there a scintilla of proof that Dutch  
24 Pugliese in fact knew that there were narcotics in that  
25 garage? But what is the truth is that when Joe

2 Sharp called Butchie and says, "I need the garage,"  
3 he says, "I got nothi-g to do with it, but I'll get a  
4 hold of the guy."

5 Narcotics? I know about it? I go running  
6 down there.

7 Butch says, "I don't know nothing about it.  
8 I can't care less."

9 He calls up. Barnaba comes down and takes  
10 care of the narcotics. Where is the proof? Where is  
11 the inference thawt Butchie knew there was narcotics  
12 there?

13 The one other person left is Mrs. LaSalata.  
14 She, in effect, tells us the same thing as Joe Sharp tells  
15 us, the husband. What was she brought here for? She  
16 was brought here to create an impression that she was not  
17 frightened of Butchie. They don't tell you that two  
18 FBI men and two narcotic men come down with a subpoena,  
19 they don't tell you that three days they keep her coming  
20 back and back and back, a nervous woman to begin with  
21 whose husband is in trouble. That was not elicited on  
22 direct examination, it has to be on cross examination  
23 that two agents served her with a subpoena, that they  
24 kept her waiting three days. And what they want  
25 you to know when Butch came down to ring her bell

2 because he was telling her, "Have your husband get in  
3 touch with my lawyer," they want you to infer that she was  
4 frightened. No.

5 I will give you one analogy for which you  
6 have to measure the credibility with respect to Barnaba  
7 and Pannirello and I tell you Dawson is eliminated, but  
8 if you want to measure his credibility also.

9 You work hard all your life, you build up a  
10 successful business, you want to go away so you say to  
11 your spouse, "Honey, we are doing very good, I got somebody  
12 to watch the cash register; I got Barnaba, I got Pannirello,  
13 I got Dawson to watch our cash register while we go away  
14 on vacation. They promise me they won't steal."

15 Is there one amongst you that would trust him  
16 for your money? Well, if you don't trust him for your  
17 money, you can't trust them for their lives because their  
18 lives are more important. If they don't inspire that  
19 kind of confidence with respect to your money, then  
20 they cannot inspire that kind of confidence with respect  
21 to their liberty.

22 With respect to the defendant's not taking  
23 the stand, that is, Butch Pugliese not taking the  
24 stand, I can tell you that his Honor will instruct you  
25 that no unfavorable inference is to be drawn. I know

2 that a jury would like to hear a defendant say he is not  
3 guilty and listen to it. But I say to you that was  
4 already done. The defendants said they are not guilty  
5 and whether they say it from there or they say it from there  
6 they say they are not guilty. We don't have to prove  
7 our innocence, but reliable and credible proof is what you  
8 need.

9 I suppose there is some evidence in this case,  
10 but some evidence is insufficient and insufficient evidence  
11 is not enough to convict a defendant beyond a reason-  
12 able doubt. You cannot say he is probably guilty, you  
13 < cannot say he is almost certainly guilty, you cannot say  
14 maybe he's guilty. Unless you can say he is guilty  
15 without equivocation and that the government proved it  
16 by clear and convincing and overwhelming and credible testi-  
17 mony which came from that stand, then you cannot say that  
18 they are guilty. You got to put your relative over there  
19 and find when Barnaba's testimony was good enough or  
20 Pannirello's testimony was good enough or Dawson's testi-  
21 mony was good enough.

22 If your mind is wavering and you have a  
23 doubt, stand on your feet in that jury room and be  
24 heard. Do not bargain away his life because you are  
25 tired. Don't surrender because you are out a long time.

2 Don't ruin his life and his children's lives.

3 You know, it is a heavy responsibility an  
4 attorney has and sometimes you forget things, you get pre-  
5 occupied and if I omitted something it is not because I  
6 didn't think it was important, I can forget. But now  
7 it is your responsibility, your recollection of the  
8 record. You can call for the record at any time to  
9 refresh your recollection. So if I omitted something  
10 it does not necessarily mean I didn't think it was im-  
11 portant.

12 We have done our job, the government did theirs,  
13 most assuredly his Honor has done his. It is now  
14 your responsibility. You do it according to the dic-  
15 tates that exist in this courtroom. And I say to you  
16 from the lack of evidence, from the lack of credible  
17 evidence, there is only one verdict, not guilty.

18 Thank you.

19 THE COURT: All right, ladies and gentlemen.

20 (The jury left the courtroom.)

21 THE COURT: How long will you be?

22 MR. LOPEZ: About 45 minutes.

23 They have to bring some exhibits down.

24 THE COURT: You want some exhibits?

25 MR. LOPEZ: Yes. I spoke to the govern-

2 ment and they said they would bring the exhibits  
3 down.

4 THE COURT: Let them go get the exhibits.  
5 We will take five minutes.

6 (Recess.)

7 (In open court; jury not present.)

8 THE COURT: Bring back the jury.

9 (Jury present.)

10 THE COURT: All right, Mr. Lopez.

11 MR. LOPEZ: Your Honor, Judge Duffy, members  
12 of the defense, gentlemen of the prosecution, Madam  
13 Forelady, ladies and gentlemen of the jury:

14 Let's face the issue squarely and tell it as  
15 it is as far as DiNapoli is concerned. The prosecution  
16 demands that you convict DiNapoli on the statements  
17 attributed to him by Pat Dilacio, who was not here to  
18 testify, upon whose credibility you did not pass, on the  
19 statements attributed to Frank Pugliese, who rested on  
20 his presumption of innocence and could not be compelled  
21 to testify, and on the testimony of Harry Pannirello, who  
22 swore to you that he never heard DiNapoli make any  
23 references to narcotics, never heard him talk about  
24 narcotics, never saw him in possession of narcotics, and  
25 he swore to you that he never had a transaction of narcotics

2 with Joseph DiNapoli.

3 Let's call it as it is. Convict DiNapoli if you  
4 want to, but let it be on the evidence, and only on the  
5 evidence.

6 As to Pugliese, every defendant has a right  
7 to rest on his presumption of innocence and his plea of  
8 not guilty. As to DiNapoli, every witness in an American  
9 courtroom has the right to face his accusers. And as  
10 to you, you have the absolute right to pass upon the  
11 credibility of every witness who makes an accusation against  
12 a person charged with crime in an American courtroom.

13 Let's forget about Shakespeare, let's forget  
14 about quotes, about Mark Twain, and let's forget about quo-  
15 tations from the Holy Bible. Let's talk about quotations  
16 from Harry Pannirello and let's ask ourselves one thing.  
17 The man who says, "It is not I who accused DiNapoli of  
18 drug transactions, it is they, the people who have not  
19 testified, Pat Dilacio and Pugliese," who was joined in  
20 this case as a defendant by the government and therefore  
21 unavailable as a witness to us, "It is they who accuse him,  
22 not I."

23 Does the government, does the prosecution,  
24 trust Pannirello? He was arrested in February, 1973 as  
25 a result of a drug transaction with Special Agent Logan.

2 He has not been sentenced. Why?

3                 This case was presented to the grand jury in  
4 October and December of 1973 and we started the trial in  
5 January. Speed is fast for these defendants. Why  
6 is it that Pannirello has not been sentenced? Be-  
7 cause, you can infer from the evidence of this case, the  
8 prosecution doesn't trust him to fulfill his side of  
9 the bargain. They want to see what he is going to do.  
10 They want to see what success his testimony will have.  
11 But they want you to trust Pannirello and through his  
12 mouth, through the statements he attributes to others,  
13 convict DiNapoli.

14                 Is Pannirello an interested witness? His  
15 Pannirello a tainted witness? Does he come here with  
16 clean hands? Well, I am not going to labor this point  
17 because you have heard it time and time again. He  
18 has told you from his own mouth that he is facing 30  
19 years. His testimony doesn't come unmotivated here.  
20 His testimony is tainted. He has a stake in this  
21 prosecution, a definite stake in this prosecution,  
22 and I think it is up to you to consider his testimony in  
23 that light.

24                 Now let's talk about the identification of  
25 DiNapoli. No one in this courtroom, none of the

2 witnesses for the prosecution, ever identified DiNapoli  
3 from that witness chair except Pannirello. And what  
4 a performance that was.

5 You will recall that on direct examination  
6 the prosecution had Pannirello up there and they asked him,  
7 "Look around the courtroom and look at DiNapoli,"  
8 and DiNapoli was seated right there with that same suit,  
9 with a similar shirt, with the same tie, and he was  
10 sitting next to me, and Pannirelly told you, "Well,  
11 I heard where the objections were coming from when the  
12 name DiNapoli was being mentioned." He inferred to you  
13 that he knew who his lawyer was.

14 And when Phillips pleaded with him, "Do you  
15 recognize him?" he could not recognize him.

16 And when he was asked, "Do you see anyone that  
17 resembles DiNapoli?" he said he could not find anyone  
18 in the courtroom that resembled DiNapoli.

19 Then later, in connection with another defendant  
20 who was seated almost adjacent to DiNapoli, he was asked  
21 to go off that witness stand, to go into the well of the  
22 court, and point that other defendant out, and he did, and  
23 DiNapoli was right there, seated in the same place where  
24 he is now, and despite the fact that during the entire  
25 afternoon session questions were asked in connection with

2 DiNapoli, he did not identify him.

3                   But then something happened, something  
4                   happened that is repeated time and time again in connec-  
5                   tion with the testimony of Pannirello, there was a  
6                   conversation and the man, Pannirello, who could give you  
7                   dates of March, 1970, of April, 1970, of June, 1970, could  
8                   not remember whether it was he who had communicated with  
9                   Phillips and asked for an interview in the intervening  
10                  day of the session. He looked pleadingly at the prosecu-  
11                  tion for a reply. "I don't remember what happened  
12                  yesterday or the day before. Ask me about what happened  
13                  in June of 1971 and I'll tell you, June or March." He  
14                  could not tell you.

15                  And finally he admitted to you on cross examina-  
16                  tion that even without looking in the direction of  
17                  DiNapoli he was able to point him out and identify him on  
18                  the second day or third day of his testimony.

19                  You heard Pannirello here. "The last trans-  
20                  action" -- oh, yes, he told you in your presence -- "drugs  
21                  in January of 1973, that was to be my last transac-  
22                  tion. I didn't want to have anything to do with drugs.  
23                  I was making my amends to society. I didn't want to  
24                  have anything to do with anyone connected with drugs."  
25                  He told that to you.

2                   And moments later, confronted in cross examina-  
3                   tion, he admitted to you that even after he had made this  
4                   intention, even after he had involved his own brother in  
5                   drugs, even after he had involved Jimmy Provitera, his  
6                   brother-in-law, in drugs, even while he was telling  
7                   Logan lies like "I made \$500,000 in drugs, I been in-  
8                   volved in drugs for 10 years, I made and I have a stash  
9                   of \$300,000," while he was telling Dawson, "You know that  
10                  seizure of a million dollars on February 3rd,  
11                  whatever it was, I had a stake in it, I lost my connection,  
12                  while he was saying that he was telling you upon his  
13                  oath -- and, ladies and gentlemen, what is an oath but call-  
14                  ing upon Almighty God to bear witness to what you say --  
15                  he was telling you, "Oh, ladies and gentlemen, I had  
16                  seen the light, that was going to be my last transac-  
17                  tion."

18                  And then he said, confronted with the words  
19                  that he had previously said, that he had gone to  
20                  Pat Dilacio and said, "Move a package, sell drugs, but  
21                  bring me money." This was after the last transaction.

22                  And then we talk about Carmine Pugliese, how  
23                  he appeared before people like yourselves, a grand jury,  
24                  in October, and there in that grand jury he gave another  
25                  performance and he told that grand jury in October of 1973,

2 "I have been dealing for years in drugs with Carmine  
3 Pugliese."

4 You just heard Mr. Rosenberg mention similar  
5 points like that. That's what he told the grand jury.

6 Then, of course, he gave another sterling per-  
7 formance. He speaks to the prosecutor, rushes back into  
8 the grand jury, and he says, "No, it's not been for  
9 years." He rectified that testimony.

10 To evaluate the man you have to consider all  
11 these matters.

12 Now we come to another situation. You see,  
13 the prosecution is bringing Pannirello up to June of  
14 1971 and he is going to be called upon to make a visit to  
15 Joseph DiNapoli's girlfriend's house some place in the  
16 Bronx. So now the prosecution asks, "And before June  
17 of 1971," again through the mouth of Pugliese, "did he  
18 tell you that he was dealing in drugs with DiNapoli?"

19 You heard him. "Yes, he told me."

20 Sure enough, that direct testimony upon  
21 cross examination turned to an insinuation and then to a  
22 full and frank admission when confronted with his own words  
23 by Nolan, to the effect that he did not know who Pugliese  
24 was dealing with in drugs until the fall of 1971,  
25 and even then he only knew it, he asks you to believe,

through someone else. But you see, it was necessary for the prosecution to taint the meeting at Bronxdale, to taint it with the knowledge that there was drugs afloat.

And now let's go to that meeting in 1971, in June of 1971, and let's see if there was such a visit. As you recall, on direct examination -- and no question surprised him, his answers were well established, he had been rehearsed -- he told us that he had gone in the company of Pugliese to Bronxdale, to some place in the Bronx, to Joe DiNapoli's girlfriend's house, and there in his presence he had entered the house and Pugliese had given an undisclosed amount of money to DiNapoli, which he estimated at about \$10,000. The conversation was brief. It did not touch upon narcotics. It was short. He met Joseph DiNapoli's girlfriend. He saw the inside of the house. Then he left. That's what he told you.

1B 2 Well, when he was confronted on cross-examination  
3 would you believe that he could not remember his direct testi-  
4 mony? When he was asked, "Didn't you tell the prosecution  
5 that you visited Joseph Di Napoli's girl friend's house on  
6 Bronxdale Avenue," he said, "No."

7 That even shocked me, because I wanted to ask  
8 him, "Well, didn't you tell Agent Nolan months ago, months  
9 ago, that the house was on Randall Avenue?" He admitted  
10 yes, he told them when confronted with that. Was it true  
11 then? It was true then, but not true today. This is the  
12 game that the witnesses are playing. It's true then, but  
13 it's not true today.

14 And, of course, with that he was asked all the  
15 other questions.

16 "Well, what does Joseph Di Napoli's girl friend  
17 look like?"

18 "I don't remember."

19 "Did she have black hair, did she have blond  
20 hair, was she slim, was she heavy? What about it?"

21 "I can't remember."

22 "Well, the living room?"

23 "It had a sectional."

24 It turned out it had two sofas and a table, not  
25 unusual for living rooms.

1 hp2

2 "What about the painting, what about the floor  
3 carpeting?"

4 "I don't remember."

5 But then came the very point upon which the  
6 prosecution decided to test the credibility of Pannirello  
7 and that was the great living room wall, and this became  
8 the central issue as to that testimony.

9 Pannirello said, repeatedly, "From the living  
10 room I could see the dining room and I am as sure of that  
11 as anything else."

12 Of course, when he said that the prosecution  
13 realized it was in trouble, because not only did Di Napoli  
14 produce witnesses, three or four, who showed that it was  
15 an impossibility because there was a wall between the living  
16 room and the dining room, which cast extreme doubt upon  
17 that testimony, the prosecution didn't stop at that and  
18 called two Keystone Comedy Cops, Pallatroni and Reilly.  
19 Of course, they saw no wall. Of course, their size of the  
20 wall, the entrance was in the center. Of course, Pallatroni  
21 said it was on the side. "But we were there on February  
22 3, 1972."

23 Look at their credibility. The men who took  
24 from Spurdis \$1,000,000 in this suitcase couldn't agree  
25 among themselves what they did with the million dollars

1 hp3

2 five minutes after they seized it. And they are going to  
3 tell you whether there was a wall in that living room or  
4 not. They didn't know. They left that witness stand  
5 like babbling idiots, with Reilly in the night,in the  
6 rain, not knowing what he was doing underneath the Bronx  
7 River Expressway under the Third Avenue Exit with Pallatroni  
8 and the suitcase in the car.

9 These gentlemen could not make the wall disappear,  
10 because the wall was there, and there are photographs here  
11 to show you, because a picture is worth a thousand words,  
12 and you are free to see it. The wall is there. Our little  
13 mural man said, "Who am I, Superman, that I can see from  
14 the living room to the dining room?"

15 And as the young lady from Jay Walter Thompson  
16 told you, "I have been a visitor at the Di Napoli house at  
17 1908 Bronxdale for a long time and since March, certainly,  
18 of 1971," and she fixed the date because of a birthday,  
19 "and the wall was there."

20 The prosecution chose to fight Pannirello's  
21 credibility as to that visit in 1908 Bronxdale on that basis  
22 and it's up to you to decide whether the wall in that  
23 living room, the great living room wall on Bronxdale Avenue,  
24 disappeared.

25 And to boot, he never mentioned this visit to the

1 hp4

2 grand jury on his appearance in October and his appearance  
3 in December of 1973.

4 Of course, we had Nolan here, the agent that was  
5 called, another pitch here for the prosecution to save  
6 Pannirello. He was the agent that said, "He never told me  
7 it was Randall." But you have Pannirello's testimony  
8 saying, "I did tell him it was Randall."

9 Of course, it was Nolan that came back, "But he  
10 identified a photograph of Joseph Di Napoli," in order to  
11 bolster the falling credibility of Pannirello.

12 The next piece of evidence again supplied by  
13 Pannirello is that famous October, 1971, meeting and you  
14 will recall that he mentioned that there was a meeting  
15 between Dilacio and himself and one of the other defendants  
16 here, Pugliese, and he told him how the thing was going to  
17 work and about the telephone numbers and how one of the  
18 defendants here said that Dilacio was to go and pick up  
19 two kilos of heroin from Di Napoli.

20 You know what he told the grand jury? That he  
21 and Dilacio went to pick him up. He swore to that before  
22 people like yourselves.

23 And confronted with it, he said, "Well, it's not  
24 accurate. I didn't go, I wasn't there, I saw nothing about  
25 it."

1 hp5

2           Did he correct the testimony before the grand jury,  
3 who returned these indictments?    Was that grand jury  
4 entitled to know that mistake, that inaccuracy? Why wasn't  
5 the prosecution so adept at correcting that testimony as  
6 correcting every other piece of testimony that did not suit  
7 their theory of the case?

8           Now let's take the sale of one kilo of heroin in  
9 December of 1971.    That's the second count against Di  
10 Napoli.   The first count is the general dragnet con-  
11 spiracy and the second count is what they call the sub-  
12 stantive count.

13           Di Napoli is said to have sold one kilo of heroin  
14 in mid-December, 1971.    He came in and he glibly told us  
15 that Dilacio, not him -- "Not me, ladies and gentlemen,  
16 I didn't do it, Dilacio did it, Dilacio did it, not me."

17           But then another curious thing happens with Panni-  
18 rello.   He is asked, "Well, didn't you tell Special Agent  
19 Nolan that after Pugliese went to jail" -- and this is in  
20 October of 1971, October 22, 1971 -- "you never got through  
21 anyone any drugs from Di Napoli?"

22           "Yes, I told him that."

23           "Well, was it true then?"

24           "Oh, yes, it was true then."

25           What are we playing here, games? It was true then

1 hp6

2 and this is true today and everything is true and the barest  
3 contradictions are made possible in his testimony?

4 Then there is the whole question about the tele-  
5 phone call that was made in his presence, again, "Not by  
6 me, ladies and gentlemen, but by Dilacio. He was calling  
7 Di Napoli." Never heard Di Napoli's voice, never told us  
8 about the number he called, never participated in the con-  
9 versation, and didn't even tell us what the telephone con-  
10 versation related to.

11 And all along this time Pannirello is telling us,  
12 "Well, Di Napoli was stalling Dilacio. You see, he kept  
13 stalling him. 'Call back again, call back some other time.  
14 Wait and see, wait and see.'"

15 This is going to become very important because of  
16 another very important factor here.

17 Also, after Pannirello is arrested he says he  
18 went to see his partner, Dilacio, he went to see his supplier  
19 Carmine Pugliese, but he never went to see Di Napoli for  
20 any helpwhatsoever, and that is quite obvious, why he didn't,  
21 because he had nothing to do with Di Napoli.

22 Now, the government here says that this is a  
23 conspiracy. "Look, ladies and gentlemen, you can't piece  
24 this conspiracy together by one witness. This is like a  
25 puzzle. One witness comes in and gives you these pieces,

1 hp7

2 then another witness comes in and supplies other pieces,  
3 and then you begin to see a picture, and when the final  
4 witness is in what have you got but a conspiracy."

5 Let's adopt that theory. Stasi said, "I see  
6 a picture here and I see Joseph Di Napoli." It's in  
7 evidence. You can look at it.

8 Well, Stasi never made reference to Di Napoli,  
9 Joseph Di Napoli, again. He said he knew his brother, who  
10 is neither a co-conspirator here nor a defendant. He said  
11 nothing about Di Napoli. Well, here is a person who claimed  
12 to be heavily involved in drugs and could say nothing about  
13 Di Napoli.

14 What does Barnaba say? Well, Barnaba doesn't,  
15 first of all, even identify Di Napoli. But previous to that  
16 Government's Exhibit 50 is introduced. That is a photograph,  
17 according to one of the agents, of Vincent Papa.

18 Of course, when the team of Reilly and Pallatroni  
19 take the stand they say it's not Papa. They make things  
20 complete and even more confusing. "It's not Papa. We  
21 should know. We are the ones who arrested him. We are  
22 the ones who identified him. It's not Papa."

23 Barnaba looks at that picture and he says, "I  
24 wouldn't know Papa if I fell on him."

25 But what does he give us? It's going to become

1 hp8

2 interesting, because he says to us, "I was dealing with a  
3 guy named Dominick Lessa."

4 Anybody see Dominick Lessa? He is not here.

5 Anyone see him as a witness in this case? He is not here.

6 "And he told me; not me, because I don't know  
7 Papa, but he says he is dealing with Papa, although I never  
8 seen the guy in my life."

9 So therefore you got more of this type of testi-  
10 mony coming in.

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5A    2      And then Barnaba says something very curious.

3      Mr. Curran has him on the stand and he says, "In December,  
4      1971, did you have a conversation at the Cottage Inn in  
5      connection with Dilacio?

6      "Yes.

7      "And did Dilacio tell you anything about Di  
8      Napoli in December?"

9      It is Mr. Curran suggesting the date.

10     "Yes, I had that conversation.

11     "And what did he tell you?

12     "He told me that Di Napoli said to Dilacio, I  
13    didn't hear it, but that he said, 'No way I can supply  
14    drugs.'"

15     Well, the prosecution sat down with that one and  
16    then the cross-examination began and I reaffirmed -- that  
17    was the only thing I was interested as far as Barnaba was  
18    concerned -- reaffirmed that testimony. And if you have  
19    the testimony read back to you, you will see how Barnaba  
20    says, "You mean November?"

21     I said, "No, December."

22     He says, "Yes, that's true."

23     Now you see what happens if Pannirello is truthful  
24    and is saying what Pat Dilacio is telling him and saying,  
25    well, he was stalling him right along and they made that buy

1 tp2

2 in December of 1971, it doesn't fit in with the prosecution  
3 case to have Barnaba saying, well, gee, in December or in  
4 November, 1971, Di Napoli was saying no drugs, no way.

5 So now they got him back on redirect and Barnaba  
6 has a discussion with the prosecution. He is now asked by  
7 the prosecution, "Could that conversation have taken place  
8 in January, 1972?"

9 You don't even have to guess what the answer was.

10 "Oh, yes, of course, possibly."

11 That was his answer. And this was after a dis-  
12 cussion with the prosecution in connection with this matter.  
13 So his testimony changes now to suit the theory of their  
14 case.

15 So you see as we piece these different parts of  
16 the conspiracy together, we begin to see contradictions.  
17 We don't begin to see that whole picture, but there, again,  
18 as to Di Napoli, it's always, "Not me, what someone else  
19 said." As to Vincent Papa, who is not here, who is not  
20 a witness, "It's not me, it's what somebody else says."

21 And I keep repeating to you, you are judges of  
22 the facts and you have the absolute right, the absolute  
23 right and duty to pass upon the obligation of the credibility  
24 the believability and reliability of every witness that  
25 takes that stand.

1 tp3

2 Now comes the seizure of February 3, 1972. There  
3 is a detective somewhere loose that never testified here  
4 by the name of Spurdis, never called as a witness. But from  
5 the testimony I gather that he did everything. He made the  
6 complaint, he seized the suitcase, he stopped the car, he  
7 made the arrest, he got the affidavit, he signed the com-  
8 plaint, he seized the money, he turned it over to Pallatroni.  
9 He wasn't here.

10 Maybe you can infer from that evidence that he  
11 could not make living room walls disappear. But there is  
12 something more important. Now they introduce one million  
13 dollars into evidence and they throw it at me and they say,  
14 "Cross-examine that." One million dollars.

15 I have never seen one million dollars in all my  
16 life and I imagine, unfortunately, neither have any of you  
17 seen one million dollars in one pile. Let me tell you,  
18 to cross-examine one million dollars is a devil of a burden.  
19 It's really tough to cross-examine one million dollars  
20 because, you see, the prosecution now desperate realizing  
21 that no one directly has involved Di Napoli, their move now  
22 is to invite your speculation with regard to that one  
23 million dollars.

24 Geez, nobody goes with one million dollars at  
25 9.30 at night on the streets of New York. You got to be

1 tp4

2 crazy. There must be some bad thing afoot. You got to  
3 answer these things and you got to see it. So that is the  
4 position that I was in.

5 Of course, we begin to tear down a little bit and  
6 Pallatroni and Reilly begin to tell you, you know, "We  
7 found no narcotics in the car, we found no narcotics on the  
8 person of Vincent Papa, we found no narcotics on the person  
9 of Joseph Di Napoli. We went into 1908 Bronxdale Avenue  
10 and tore the walls down and couldn't find anything."

11 The government, the prosecution has failed to  
12 connect this one million dollars with any narcotic trans-  
13 action, but it's a good maneuvre because they certainly are  
14 inviting you to speculate and to guess.

15 Now, an unpleasant thing took place here. I  
16 couldn't cross-examine one million dollars, but I could  
17 quote the Assistant United States Attorney and, therefore,  
18 I brought before you the record of conviction and the modus  
19 operandi of Di Napoli's workings. Di Benedetto took that  
20 stand and testified that Di Napoli was a shylock, that he  
21 was a runner for Di Napoli and that they were dealing in  
22 substantial money. And then we saw the testimony.

23

24

25

2                   And this is not my theory, I want you to  
3 know that. This is not my theory, these are not my  
4 words, this is not my impression; this is the position  
5 that the United States Government took.

6                   After having dismissed the complaint launched  
7 before the United States magistrate in connection with  
8 the \$1 million because they had \$1 million but they  
9 didn't know what to do with it, "Gee, we got Papa and  
10 DiNapoli."

11                  And, incidentally, I forgot to tell you so you  
12 will have to help me in your deliberations in case I for-  
13 get something, they didn't know who DiNapoli was until  
14 after they arrested him. They told you they knew who  
15 Vinnie Papa was, although there is a big dispute about the  
16 photograph. After they arrest him, naturally they find  
17 out it is Joseph DiNapoli, and they have a complaint  
18 regarding the million dollars. You heard the stipulation  
19 by the prosecution. The government and the prosecution  
20 dismissed this entire complaint against him, but they  
21 still have a million dollars.

22                  However, curiously enough, on January 4, 1973  
23 DiNapoli, on an indictment, pleaded guilty and he was sen-  
24 tenced. For what? For narcotics? No. For Shy-  
25 locking.

1 gta2

2 Now, what do these gentlemen and their associates  
3 of the prosecution say at that time?

4 I don't know if Mr. Curran was there or Mr. P  
5 Phillips was there, but Hinckley was there, the assistant  
6 United States attorney was there, and Judge Duffy was not  
7 presiding, Judge MacMahon was presiding at that time, and  
8 Hinckley went before Judge MacMahon on the issue of  
9 sentencing and did not mention narcotics. He mentioned  
10 Shylocking of substantial magnitude going into the  
11 hundreds of thousands of dollars. That was the  
12 testimony of DiBenedetto and that is the certified record  
13 of this court. And I ask you, would it be interesting  
14 for a sentencing judge to know if a person was involved  
15 in narcotics if he had him for sentence? Did the  
16 prosecution know on January 4, 1973 about the seizure of  
17 February 2, 1973, 11 months before? They had the money,  
18 they had dismissed the narcotic charges and later, as an  
19 afterthought, the million dollars is brought into this  
20 case as an afterthought. Not in one overt act on  
21 this indictment is the million dollars brought in.

22 I submit to you that the prosecution wants  
23 you to speculate. A weak case. Pannirello  
24 saying, "Not me; others." Barnaba saying, "Not me;  
25 others." Guess about the million dollars. But I

1 gta

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2 say to you on the evidence, on what the prosecution  
3 says, not on what I say but on what they say, you can  
4 infer that this million dollars is part of a magnitude  
5 oerperation of Shylocking.

6 And that's the story. No quotations from  
7 the Bible, no stories. Forget about Mark Twain and Shake-  
8 speare, that's the story. Do your duty.

9 God help you. God help us too.

10 Thank you.

11 THE COURT: All right, ladies and gentle-  
12 men.

13 (The jury left the courtroom.)

14 THE COURT: Mr. Ellis, how long do you  
15 expect to be?

16 MR. ELLIS: Your Honor, I probably will be  
17 close to an hour.

18 If I may suggest that we go this afternoon,  
19 I think four summations is an awful lot in the morning,  
20 and split it three and three.

21 THE COURT: I understand that. I know what  
22 you are up to. I know what problems you are facing.  
23 You remember I played both sides of the street.

24 All right, Mr. Fisher. How long do you  
25 expect to be?

2 MR. FISHER: If your Honor please, I will  
3 sum up in front of Mrs. Rosner.

4 THE COURT: You will?

5 MR. FISHER: Yes.

6 THE COURT: All right. How long do you  
7 expect to be?

8 MR. FISHER: About an hour and a quarter, an  
9 hour and 20 minutes, your Honor.

10 THE COURT: Mrs. Rosner, how long do you  
11 expect to be?

12 MRS. ROSNER: At least the same, your Honor.

13 THE COURT: All right. Let us reverse the  
14 procedure today. Everybody be back at 1:30 and we will  
15 start then.

16 (Luncheon recess.)

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A F T E R N O O N      S E S S I O N

1.30 P.M.

(In the robing room.)

MRS. ROSNER: Your Honor, I understand that your Honor intends to try Count 2 in the following fashion:

If the jury returns a verdict of guilty as to any  
of the other counts, the conspiracy or the substantive counts  
your Honor intends at that time before this jury that we may  
present further evidence, sum up on that evidence, and your  
Honor will then charge with respect to Count 2.

12 I object to that procedure, your Honor, for this  
13 reason:

14                   The defendant is entitled to the presumption of  
15                   innocence on Count 2, just as he is on any other count.  
16                   Many of the facts involved in the litigation of Count 1,  
17                   although not all of them, are also involved in the litigation  
18                   of other counts.

19 I submit, your Honor, that it is totally impossibl  
20 for this jury to approach Count 2 with an open mind and with  
21 the presumption of innocence applying to the defendant  
22 after they have found that presumption overridden beyond a  
23 reasonable doubt as to many of the facts in issue.

24 I would suggest, your Honor, that since he is  
25 the only defendant on trial, although a slightly longer time

2 would be taken up, in view of the gravity of the offense  
3 being natural life imprisonment, the only fair procedure  
4 would be to impanel a jury for the purpose of trying Count 2.  
5 It would take perhaps a day more, but it is certainly fairer,  
6 your Honor, than to present to a jury which has already  
7 passed upon this man's guilt the issue of whether he should  
8 spend the rest of his natural life in jail.

9 MR. CURRAN: Your Honor, may I be heard briefly?  
10 THE COURT: Yes.

11 MR. CURRAN: As your Honor will recall, at a pre-  
12 trial conference before this case, your Honor stated that he  
13 intended to try this case in a bifurcated fashion as to  
14 Count 2 with respect to Inglese if the jury returned a  
15 verdict of guilty on the other counts. At that time, as I  
16 recall -- I don't have the record in front of me -- there  
17 was not only no objection, but I believe there was a specific  
18 agreement by the defense. I could be wrong about the latter  
19 part, but I'm quite certain there was no objection.

20 It seems to me what defense counsel is now trying  
21 to do is to have the best of both worlds by sitting on  
22 rights at the time when it could have been insisted that  
23 they all be tried together and certainly that would have  
24 been the way the government preferred and had originally  
25 intended and not waiting and suggesting that it can't be

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2 done.

3 It seems to me perhaps even now the defense has  
4 an option, and if they are pressing to have this Count 2  
5 go to the jury on the evidence in this case, the government,  
6 of course, has no objection. But I just submit to your  
7 Honor that it should not be permitted to be done both ways.  
8 I think that is the net effect, at least, of what defense  
9 counsel is now seeking and the government opposes that  
10 application.

11 MRS. ROSNER: If I may respond briefly, your  
12 Honor, the notion to biforcate the trial in the fashion  
13 which your Honor now says he intends to do is not one which  
14 sprang from any application by the defense. We moved to  
15 dismiss that count and I believe to sever it.

16 I understood, your Honor, or the defense under-  
17 stood at the pretrial conference that your Honor intended  
18 to sever the count, meaning that it simply would not be tried  
19 at this time. I at no time contemplated that your Honor  
20 would submit this count to this jury after they had already  
21 passed on the defendant's guilt and I think the procedure is  
22 unfair.

23 With respect to detrimental reliance, your Honor,  
24 I would say this:

25 Your Honor intended not to present evidence of

2 Count 2 to this jury for the very good reason that they might  
3 very well be prejudiced in their consideration of the other  
4 counts. This was your Honor's notion and I agree that it  
5 was a fair one as far as it goes. The counts should not  
6 be tried together. So in that respect there really is no  
7 detrimental reliance.

8 I agree with your Honor as far as you have gone,  
9 but we part ways on this consideration should it be this  
10 jury or should it be some other jury that passes on the  
11 life count.

12 I think all the considerations, your Honor, militate in favor of impaneling a new jury. One, there is only  
13 one defendant on trial. It could be done in a matter of  
14 hours, and in this courthouse juries are frequently impaneled in two hours or three hours, so that the additional  
15 time involved simply is not a factor militating in favor  
16 of sending this count to this jury.

17 Certainly, your Honor, if you thought it prejudicial  
18 to try Count 2 with the other counts, and that notion we are  
19 in basic agreement with, how much more prejudicial to send  
20 it to this jury after they have already determined many  
21 similar facts in a fashion opposed to the defendant's  
22 interest? It just seems to me, your Honor, that it cannot  
23 be fairly done and the stakes are simply too high to quibble

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2 over a day or even two days of additional court time. We  
3 are talking about natural life, not another substantive  
4 count of 15 years.

5 It just seems to me, Judge, that the basic notion  
6 that they should not be tried together is a correct one,  
7 but we part ways at whether this jury can possibly fairly  
8 consider that count after having found the defendant Inglesi  
9 guilty on any other count.

10 I would suggest, your Honor, that time considera-  
11 tions are minimal as opposed to the seriousness of the count  
12 I think we can do it expeditiously and I am willing to do it  
13 immediately after this jury returns a verdict if there  
14 should be a verdict of guilty, but I just don't see how  
15 this jury can fairly consider the issue.

16 THE COURT: No, I intend to do it the way I said  
17 I was going to do it the first time, which means that the  
18 same jury is going to get whatever other evidence and  
19 whatever summations need to be done. All right. Your  
20 application is denied.

21 MRS. ROSNER: Thank you, your Honor.

22 (In open court, in the absence of the jury.)

23 THE COURT: Mr. Ellis, are you all set?

24 MR. ELLIS: Yes, your Honor.

25 THE COURT: All right. Bring back the jury.

2 (Jury present.)

3 THE COURT: All right, Mr. Ellis, you may proceed.

4 MR. ELLIS: Thank you, your Honor.

5 Judge Duffy, Mrs. Hare, Ladies and Gentlemen  
6 of the Jury, gentlemen of the prosecution, fellow defense  
7 counsel.

8 For about eight weeks now, ladies and gentlemen,  
9 we have been sitting here and I have been representing a  
10 man who is, understandably, nervous considering the circum-  
11 stances as a defendant in a major narcotics case. But when  
12 this gambling client of mine found out that I was the 13th  
13 lawyer to stand up, he really got fidgety and he really gave  
14 us trouble. I am No. 13, and that means we are getting pretty  
15 close to the end of this.

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2                    Before I go into my discussion of the case, I  
3                    want to thank all of you for your concentration and what  
4                    an extraordinary experience it must have been for all of  
5                    you.      Eighteen strangers, all walks of life, not only  
6                    sitting together in judgment of the guilt or innocence  
7                    and the future lives of all of the people in this court-  
8                    room, but also being locked up together and being completely  
9                    insulated from your everyday lives, your families, your  
10                  business.     What a strain that must have been.     And  
11                  I am sure that if you are in any bit of the position that  
12                  I am in with my law partners clamoring to have me back,  
13                  you are all most anxious to get back to your daily  
14                  routines.

15                  But I am also sure from the concentration that  
16                  I have seen every one of you give to this case and to all  
17                  of these lawyers that have been standing up that nobody,  
18                  nobody in this box will rush through his deliberations  
19                  without considering every bit of the pertinent evidence  
20                  and all of the arguments and looking at those exhibits.  
21                  I would hope, and I'm sure, that nothing else will  
22                  happen.

23                  Mamone is in a little bit of a different situa-  
24                  tion from the other defendants.     He is the one person  
25                  in this courtroom with respect to whom nobody took that

2 box and no piece of evidence was entered, introduced,  
3 that said that Mamone ever handled one drop of narcotics.  
4 He never financed a narcotics transaction, nor was he ever  
5 asked to finance a narcotics transaction. He never cut  
6 drugs, he never bought drugs, he never sold drugs, he was  
7 never present when drugs were discussed. Nobody came  
8 up to him and offered to buy drugs or sell drugs.  
9 That is not the case against Mamone. On these points,  
10 at least, it is not a question of who you believe and  
11 who you don't believe; nobody even says it.

12 A lot of locations were talked about in this  
13 courtroom. You heard about the Lo Piccolo and the  
14 Tear Drops Bon-Soir and the Centaur and the Pine Tree Inn  
15 and the Pelham Log Cabin and the Barone Bar and the  
16 Blue Lounge. Mamone was not present at one of those  
17 locations. There has never been a suggestion that he  
18 was.

19 There are two locations in this case that involve  
20 Mamone. One is the Cottage Inn, which is a licensed  
21 premises roughly in the neighborhood where he lived where  
22 the bartender said he came in to drink, just as everybody  
23 else did, and the other is a social club called the  
24 Beach Rose Social Club, about which I will have more  
25 to say.

2 What, then, is the case about Mamone all about?

3 He is here. He is charged with something.

4 Well, last October, while Mamone was living in  
5 Ft. Lauderdale, Florida with his wife and children, an  
6 indictment came down. That indictment contains  
7 something more than two dozen charges containing various  
8 accusations of specific sales of narcotics, none of which  
9 involve Mamone. It also had a catch-all count, the  
10 first count about which much has been said in this court-  
11 room, the conspiracy count. It mentions Mamone's  
12 name in the caption, it said, "Angelo Mamone, defendant,"  
13 and above the first count it listed all of the de-  
14 fendants, and Mamone's name was there and there was a  
15 sentence that said that he conspired to distribute and  
16 sell, et cetera, various other verbs in it, but sell  
17 narcotic drugs. It told Mamone nothing more about the  
18 charge against him.

19 Well, he came up here and he got himself a law-  
20 yer and we didn't know much more about the case than he  
21 did.

22 In 1973, December of 1973, that first October  
23 indictment was replaced by a superseding indictment.  
24 That superseding indictment did two principal things.  
25 It dropped John Earnaba as a defendant in this courtroom.

2 We were told that was a phony indictment against  
3 John Barnaba, that he was never a federal defendant.

4 And the other thing it did was that it said that in further-  
5 ance of this massive narcotics conspiracy, in or about  
6 November, 1970, Angelo Mamone went to the Beach Rose  
7 Social Club and he counted money. That's all.

8 That's all we knew about Mamone's involvement in this case,  
9 until we got into this courtroom.

10           What is a conspiracy? There is a lot of le-  
11 gal verbiage attached to what it is. I believe you  
12 will hear Judge Duffy charge you that it is an agree-  
13 ment, that it is a partnership in crime and that in order  
14 to be a member of the conspiracy everybody has to knowingly  
15 join in it and have a stake in the outcome.

16           Well, stripped of the legal talk, a conspiracy  
17 is a simple thing to understand, I suggest to you,  
18 ladies and gentlemen. It is a partnership.

19           The government says that these guys were in the  
20 narcotics business.

21           Now, not one of them would be in my law partner-  
22 ship just by knowing what is going on, just by hanging around  
23 my law office. They have to be part of the operation,  
24 they have to contribute to it, they have to know what is  
25 going on, they have to have an economic stake in it, none

2 of which, none of which the government has shown that  
3 Mamone has had in the conspiracy, in the partnership that  
4 they are talking about here.

5 Now, the word "conspiracy" itself has a kind  
6 of sinister connotation to it. You think of  
7 somebody skulking around, sneaking behind shadows, acting  
8 surreptitiously. It is a negative word. But what  
9 they are talking about when they say conspiracy is a  
10 business, is a partnership, and there are only certain  
11 things you can do to be a member of a partnership. You  
12 work for it.

13 For the life of me, ladies and gentlemen,  
14 I don't know how one can be in the narcotics business  
15 without anybody saying that at the barest minimum he  
16 had something to do with narcotics. What can you do?  
17 You cut it, you sell it, you finance it, you buy it, you  
18 ship it, you store it, you import it. You got to do  
19 something. They don't even say that about Mamone.  
20 They don't say he did a thing.

21 One of the lawyers that preceded me talked about  
22 conspiracy charges being the pet of the prosecution.  
23 It is sort of easy for the prosecution to prove.

24 Can you imagine what this indictment would look  
25 like if they charged Angelo Mamone with what he really

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2 did or what they say he did? What they say he did.

3 Can you imagine an indictment which says, "The  
4 grand jury charges that in or about November Angelo Mamone  
5 counted money, that about 10 months after that, the  
6 following August, we charge that he intervened to save the  
7 life of Esrnaba's wife and children from a homicidal maniac".

8 Can you imagine what an indictment would look  
9 like that said that he married a baby-sitter of Richard  
10 Forbrick, therefore he is in the narcotics business?

11 It is a little bit ridiculous, isn't it? It's  
12 a little bit absurd. They could not have tried Angelo  
13 Mamone alone.

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2                    You are going to hear a lot about 18 separate  
3 trials here, or whatever the number is, 17 separate trials.  
4 They are not separate trials. It doesn't work out  
5 that way. They threw that heroin on the table. That's  
6 supposed to stick to Mamone's guilt, it's supposed to accrue  
7 to him and taint him. He never even saw it. They  
8 never say he did.

9                    Does any of you remember the details, the fine  
10 points of Mr. Pollak's summation upon which the guilt  
11 or innocence of his client is going to depend? Or  
12 of Mr. Siegel's summation? Two days ago, Almost  
13 impossible. Almost impossible. Let alone the details  
14 the nuances, the fine points of eight weeks of testimony.

15                  How do you carry that with you? That is  
16 another advantage the prosecution has in this case. They  
17 get a guy from Tennessee, a guy from Washington, a  
18 couple of guys from New Jersey, not one of them who  
19 claimed to know Mamone. But the conclusion that you  
20 are supposed to draw is that Mamone is a business partner  
21 of theirs. Never did a thing for them. No such  
22 discussion. But he is sitting around a table when  
23 they are up there talking about the people that he is  
24 on trial with.

25                  There are also technical reasons why

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2 conspiracy is really the prosecutors' darling. Hear-  
3 say, X told me that Mamone was at the Beach Rose one  
4 day. Therefore, in an ordinary case hearsay cannot get  
5 in. In a conspiracy case it gets in. It is plainly  
6 and simply and purely a matter of throwing enough mud into  
7 the air and hoping that it sticks to enough people.

8 Now, when Mr. Phillips opened to this jury he  
9 showed you better than anybody the danger of confusion  
10 in this kind of case. I regard Phillips as an honorable  
11 lawyer, a man with a job to do, and that job as he defined  
12 it is to present the prosecution witnesses.

13 But when he had to open to this jury he said  
14 that the defendants are charged with a conspiracy,  
15 which is true, but they are also charged with selling  
16 and distributing narcotic drugs.

17 He was wrong. Was he trying to mislead you?  
18 No. But a trained lawyer made the mistake of sug-  
19 gesting that Mamone was charged with selling a narcotic  
20 drug. He is not charged with that. Mr. Phillips  
21 knows that, and he knew it then. But in his mind,  
22 dealing with then about 20 separate cases, it's darn easy  
23 to be confused.

24 Ladies and gentlemen, don't you be confused.  
25 There is just too much that depends on it.

2 I want you to remember one thing about Mamone's  
3 case and only one thing, that there is no suggestion that  
4 he did anything with narcotics in this case. Let me add  
5 a second thing to remember. What you have to base your  
6 verdict on is in the record of this case. I hope and  
7 I pray that you will call for that record. When you  
8 get to Mamone's name on that list let them read to you  
9 what actually happened, what the witnesses say happened,  
10 let them show you the exhibits. There won't be a  
11 word about narcotics and Mamone. There won't be the  
12 slightest suggestion that he was even standing at some-  
13 body's elbow when narcotics were discussed, because it never  
14 happened.

15 Why is he here? Some of our leading legal  
16 philosophers, the Supreme Court, some of the great  
17 judges in this courthouse, have characterized conspiracy  
18 or pointed out that the conspiracy carries the danger  
19 of a dragnet. Anybody connected with it who knows, who  
20 associates with people that are suspected of wrongdoing  
21 can be sucked up in that dragnet.

22 Do they have to show tangible acts of wrong-  
23 doing on the part of that person, on the part of Mamone?  
24 No. We will throw him in. It might stick. It  
25 might stick.

2 That dragnet effect is what has Mamone here,  
3 because there is no doubt and we don't deny that he went  
4 to the Beach Rose Social Club where at least on some  
5 occasions he met some of the defendants here.

6 What was the Beach Rose Social Club? We heard  
7 about it from the first major government witness, John  
8 Stasi. He described it on direct examination almost  
9 as though it were a beehive of narcotics activity. He  
10 created the impression that the only thing that went on  
11 in that club was narcotics dealing day in, day out, right  
12 and left.

13 Then cross examination. There were certain  
14 omissions. There were certain things he did not tell you  
15 about that club. He didn't tell you about the size of  
16 it. He went on to describe in response to my  
17 questions that it is about half the size of this courtroom,  
18 that it was open to all kinds of people from the  
19 neighborhood, that early every afternoon till late in  
20 the morning card games went on there.

21 "Was Angelo Mamone there, Mr. Stasi?"

22 "He was there three to four times a week.  
23 Just like other people from the neighborhood, he came  
24 there to play cards."

25 It is in the record.

2                   What else did Stasi say about Mamone?      He  
3       said, "Well, I saw him speaking to Gigi some of the  
4       time, Gigi Inglese."

5                   "Did you hear what they were talking about?"  
6       "No, sir.    I don't have any idea what they  
7       were talking about.

8                   "Yes, on one occasion Gigi sent me to Mamone's  
9       house and told me to get him."

10                  "Do you know why?"

11                  "No, sir, I don't know why."

12                  Now, the Beach Rose Club was Mamone's club --  
13       excuse me -- was Inglese's club. -- Is it so unnatural for  
14       a guy from the neighborhood to speak to the owner  
15       of the club?

16                  Now, my God, it's just plain, everyday common  
17       sense to know that a place that is open to half the  
18       neighborhood is not going to be a place where open nar-  
19       cotics transactions are going on.    There has never been  
20       any such claim.

21                  John Stasi told you how he arranged his cutting  
22       sessions there.    He said, "We would go off to the  
23       side and we would discuss it."

24                  "Why did you do that, John?"

25                  "So that nobody in the club would hear."

2           They were pretty damn careful about who  
3       overheard what Stasi arranged there.

4           John Barnaba said he was once chided for carry-  
5       ing a brown paper bag into the Beach Rose Club. That's  
6       because the people that were there were not supposed to  
7       see anything suspicious. There is not the slightest  
8       suggestion in this record that Mamone was present at the  
9       Beach Rose Club when a narcotics transaction went on, when  
10      a narcotics transaction was discussed. Nobody  
11      says so.

12           Of course, Stasi does come back on redirect  
13      and he said that "I saw Mamone huddled with Inglese."

14           I don't know what that word means, ladies  
15      and gentlemen. I think it means he saw him talking to  
16      him and he, Stasi, didn't hear what was going on. But  
17      Stasi went through hour upon hour of debriefing through  
18      Rogers, it was all on tape here, never said Mamone was in-  
19      volved in narcotics. He went before this grand jury,  
20      never said Mamone was involved in narcotics. Spoke count-  
21      less hours to Phillips and Curran, never said Mamone was  
22      involved in narcotics. He testified in this courtroom  
23      on cross and on direct, never said Mamone was involved  
24      in narcotics. The claim was just never made.

25           Let me just add one point about the Beach

2 Rose Club. You remember a chemist testified in this cour  
3 room, a chemist by the name of Fasanello, I believe his  
4 name was, Fasanelli or Fasanello. He testified  
5 that in December of 1973 he went up to Stasi's apartment  
6 and he took dust samples there and with the sensitive  
7 equipment that he had he was able to determine that years  
8 before heroin was mixed in that apartment.

9 Ladies and gentlemen, do you think that Stasi's  
10 apartment was the only place where the prosecution sent  
11 their well-equipped chemists? Don't you think they  
12 went to the Beach Rose Club after that place was closed  
13 down and they vacuumed the dust particles that were ..  
14 there?

15 The reason why that chemist didn't describe  
16 samplings of heroin found at the Beach Rose was  
17 because he didn't find any there.

18 MR. CURRAN: Your Honor, objection.

19 THE COURT: All right. Let's just stick  
20 with the record as we have it.

21 MR. ELLIS: Stasi told you that when he had  
22 to mix he went off elsewhere. That kind of stuff did  
23 not go on at the Beach Rose, where Angelo Mamone could  
24 see.

25 How is Angelo Mamone supposed to establish his

2 innocence of this charge? Think about it for a moment.  
3 If it is a bank robbery, if it is a kidnapping, even if  
4 they charged him with selling drugs, they would say that  
5 on such-and-such a date a bank was held up or a child  
6 was kidnapped or a package of narcotics was sold. But  
7 they don't give you that kind of date here.

8 They say that over a period from 1969  
9 to the date of this indictment, which turns out to be  
10 December, 1973, a superseding indictment, Mamone was in  
11 the narcotics business. What does that mean? How  
12 do you defend yourself against that charge?

13 The answer is, ladies and gentlemen, you don't  
14 have to establish your innocence. Mamone denied his guilt.  
15 He stood up in a courtroom and pleaded not guilty.  
16 From that point forward it is the burden of the government  
17 to prove every element necessary to show beyond a reason-  
18 able doubt that Angelo Marone was in the narcotics business.  
19 that he was a partner in the narcotics business. And  
20 believe me, they have plenty of means to do it. They  
21 had all the resources of the federal government, all of  
22 the manpower available to the Bureau of Dangerous Drugs  
23 and Narcotics, they had the most sophisticated electronic  
24 equipment, they had a laboratory, they had cameras  
25 trained on these people, they had wiretaps, they had the

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2 listening devices, that they had attached to their  
3 so-called cooperative witnesses, and they used them, they  
4 used all of this over a period of years, and at the end  
5 of that time they didn't come up with a single ounce of  
6 evidence directly connecting Mamone to narcotics, they didn't  
7 show that he bought -- I said it all before and I won't  
8 go through it again -- bought, sold, did anything with  
9 narcotics, or was present at any time that narcotics were  
10 dealt or discussed.

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2B 2 Let me say a word about the government witnesses  
3 as a group. John Stasi probably suffered from every moral  
4 deficiency known to man. He was a dope pusher, he  
5 was a criminal, he was a dope user, he was a self-admitted  
6 liar faced with life imprisonment. But even he, even John  
7 Stasi, had the sensitivity to your feelings to say that when  
8 he was testifying in this courtroom he was doing so because  
9 he wanted to do the right thing. It's not because he couldn't  
10 stand jail, but he wanted to do the right thing.

11 The main government witness against Mamone, John  
12 Barnaba, made no such pretense. That arrogant, amoral  
13 man, sitting there talking out of the side of his mouth  
14 into that microphone like a two-bit Humphrey Bogart made  
15 perfectly clear why he was testifying in this courtroom.  
16 "I want to help myself."

17 And who in ths courtroom can't visualize the scene  
18 in Rogers' office, saying to John Barnaba, "John, we got you  
19 now, we got you down for two A felonies, 50 to life, B  
20 felony, 25 years, C felony, 15 years, D felony, 7-1/2 years,  
21 E felony, 4 years," and a very different John Barnaba sitting  
22 there. He wasn't arrogant then. He was saying, "I can't  
23 take jail. You want somebody in this case, I'll put him  
24 in. Feed it to me, feed it to me," pleading.

25 Did John Barnaba tell Rogers that Mamone was in

1       hp2

2       narcotics?   No.   Even John Barnaba never made the claim  
3       that Angelo Mamone dealt in narcotics.   But he did wind up  
4       with his E felony.   He squeezed them and he squeezed them  
5       and he squeezed them and he squeezed them until it came down  
6       to the cooperation, so-called cooperation that he gave to  
7       the federal authorities, that he even mentions Mamone's  
8       name.    He did not mention his name to the state people.

9                  And what did he say to the federal authorities?  
10         He said that on one night in November, 1970, Angelo Mamone  
11         was present at the Beach Rose Club and helped Gigi Inglese  
12         count some money.

13               Now, I want to read that testimony to you just  
14         to prove that there is no way during that incident that  
15         Mamone could have known that it had anything at all to do  
16         with a narcotics transaction, if indeed it ever happened.  
17         Take Barnaba's word for it.   Let's take the words of  
18         Barnaba and let him describe it.   This is on Mr. Curran's  
19         direct examination.   He describes a night in November,  
20         1970, when he brought \$5500 to the Beach Rose Club.

21         "Q   Was this in small bills?

22         "A   Yes.

23         "Q   What did you do with it?

24         "A   I brought them to the Wilkinson Club and gave it  
25         to Gigi.

1 hp3

2 "Q Where at the club did you give it to Gigi?

3 "A At the bar.

4 "Q What did he do?"

5 I am skipping a line.

6 "A He took it out and put it on the bar and he called  
7 Butch Mamone to help him count the money.

8 "Q Was Butch Mamone in the club?

9 "A Yes, he was standing right there and he helped  
10 count the money and I, Barnaba, said, 'It's my money, why  
11 don't you let me count it?'" "you let me except it."

12 That is all the conversation that went on. Does  
13 counting that money put Mamone in the narcotics business?  
14 That is a little far-fetched. It's a little far-fetched,  
15 but that is all that was in that indictment.

16 Anything else that we learned about the govern-  
17 ment's charges in this case with respect to Mamone we learned  
18 in this courtroom, and whatever else you could say about the  
19 effect of that, it makes it darn difficult sitting here day  
20 after day to investigate those facts that are brought out  
21 in the courtroom, to meet them.

22 And what were those additional facts we learned  
23 in the courtroom? Before I go into them I just want to  
24 double-underline what Barnaba said about Angelo Mamone.

25 There is sort of a trial lawyer's maxim, ladies

1 hp4

2 and gentlemen, that you don't ask what lawyers like to refer  
3 to as an open question, a question that you don't really  
4 know what the answer is going to be, because that is  
5 supposed to be putting your client's head in a noose.  
6 You are not supposed to do that. But sometimes you have to.  
7 Sometimes you have to just challenge a witness and say darn  
8 it, if you are sitting up there and testifying that Mamone  
9 is dealing in narcotics don't do it by innuendo, spell it  
10 out, say it, describe what he did if he is a narcotics  
11 dealer, and I got to the point where I had to ask John  
12 Barnaba that. Let me read it to you. This is from page  
13 1639 of the record.

14 "Q Mr. Barnaba, did you ever purchase narcotics from  
15 Angelo Mamone?

16 "A No.

17 "Q Did you have personal knowledge of Angelo Mamone  
18 buying narcotics from anybody?

19 "A No.

20 "Q To the best of your personal knowledge, did you  
21 ever sell narcotics to Angelo Mamone?

22 "A No.

23 "Q To your personal knowledge, did Angelo Mamone  
24 ever even possess a narcotic drug?

25 "A No.

1 hp5

2 "Q To the best of your knowledge, did Angelo Mamone  
3 ever even engage in a narcotics transaction?

4 "A No."

5 That's the man that he says is a narcotics dealer.

6 You recall John Barnaba also describing how he  
7 went out on to the street at great length, wired for sound.  
8 Mr. Fisher showed you the recorder and how it works. He  
9 went out on to the street to try to engage in narcotics  
10 transactions with people that he knew or he thought or he  
11 wanted to frame as narcotics dealers, people that he thought  
12 he could successfully get on to that tape some evidence of  
13 narcotics dealings.

14 He didn't even go to Angelo Mamone. He didn't go  
15 to him because he knew that Angelo Mamone didn't have a thing  
16 to do with narcotics.

17 The prosecution is going to tell you something  
18 about that counting incident. In my opinion, to the extent  
19 that I can forecast what they are going to say, they are  
20 going to say before Mamone counted the money there was a  
21 narcotics transaction, earlier that day, between Barnaba  
22 and a guy by the name of Forbrick, and later on that evening,  
23 long after the counting incident, the remaining portion of  
24 that transaction was consummated in some way, somehow hoping  
25 to taint Mamone with the guilt of that transaction.

2                   But remember, ladies and gentlemen, there is no  
3 suggestion, no testimony, no evidence that Mamone was present,  
4 knew about, that he had anything to do with that trans-  
5 action. He was simply a guy in a club where he hung out  
6 from time to time, where neighborhood people went, that was  
7 standing there when somebody turned to him and said, "Give  
8 me a hand, count the money," counting some money, and he  
9 did that. That doesn't make him a narcotics dealer.

10                  Ten months after that counting incident Mr.  
11 Barnaba got himself into trouble, he says he got himself  
12 into trouble, with a Mr. Burke from Pittsburgh. He sold  
13 Burke some goods that turned out to be somehow unacceptable  
14 to him. This incident resulted in to me what must be the  
15 most bizarre testimony of this trial, because Barnaba told  
16 how Burke came after him with a gun and wanted to kill  
17 Barnaba, wanted to kill his family, and he twisted that  
18 incident into the kind of thing where he put Mamone in the  
19 position of saying that if Mamone left me alone to be killed  
20 and my wife and children to be killed he would be an honest,  
21 honorable man, but by coming to our rescue and saving my  
22 life and saving the life of my wife and the lives of my  
23 children he is somehow in the narcotics business. That's  
24 the ultimate irony. But it never happened. It never  
25 happened.

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3A      2                  As Barnaba tells the incident, he, Barnaba, was  
3                          working in a used car lot. Two-time loser. The next time  
4                          he is arrested for narcotics very, very substantial jail  
5                          term, 50 years to life possibly. But he hides, puts  
6                          narcotics in the seat of an open car on that lot at a time  
7                          when his employer is showing cars to prospective customers.  
8                          Probable? Highly unlikely. Highly unlikely.

9                          This guy needed a foundation for the Burke in-  
10                         cident to work Mamone into this case. It is a heck of a  
11                         way to work a man into a case, ladies and gentlemen, to  
12                         show that even by your version, by coming forward to saving  
13                         your life and the life of your wife and children, you are  
14                         somehow a narcotics dealer. It just falls on its face.

15                         And what is the connection that Barnaba claims  
16                         between Mamone and Burke? He said, well, he was standing  
17                         around the club -- this incident, incidentally, supposedly  
18                         happened around May, 1971. As soon as Barnaba hears that  
19                         Burke is out gunning for him, he comes back to the club  
20                         and he tells his story. He says, "I had problems with the  
21                         narcotics, Burke doesn't like it, he is gunning for me.  
22                         See what you can do." And he keeps going back. He keeps  
23                         going back at a time, you know, Mamone is supposed to be  
24                         there three, four times a week, according to Stasi. He  
25                         keeps going back and he keeps telling him, "The guy is still

1 tp2

2 after me. The guy is still after me."

3 Three months later he finally sees Mamone in that  
4 club, in August of 1971, and he doesn't repeat the whole  
5 story, he says, "The guy is still after me."

6 Check the record yourself. Ask them to read the  
7 testimony to you. Not a word about narcotics in August.

8 Why should there be? He is telling a story for three  
9 months. He says, "There's a guy after me."

10 And as Barnaba tells it in this court, Mamone  
11 overhears it. He is off somewhere and he overhears it and  
12 he says, "I know that guy. He's my customer."

13 He doesn't say what he is a customer for, whether  
14 he is a customer for suits, for loan sharking, for drugs.  
15 He doesn't say. But he would like you to believe it's  
16 drugs. He would like you to believe that Burke owed  
17 Mamone a lot of money.

18 And good-natured old Mamone, wanting to do Barnabas  
19 a favor, said, "Well, I'll go to Burke, I'll tell him to  
20 forget about what he owes you and you will owe it to me."

21 The only thing wrong with the story, ladies and  
22 gentlemen, is that good-natured Mamone never even asks  
23 Barnaba for his money, doesn't press him. Yes, he drops  
24 by the lot one day months later, according to Barnaba, and  
25 he says, "Do you have my money?" And never again hears from

1 tp3

2 Mamone again, never again hears from Burke again, does  
3 Barnaba. It just happens that way.

4 When is the first time that John Barnaba claims  
5 that Mamone and Burke -- Burke is Mamone's partner?  
6 In this courtroom.

7 Through all of the hours of debriefing, through  
8 all of the written documents, through all of the tapes,  
9 through all of the grand jury testimony, not once does the  
10 word "customer" appear. It never happens. But the case  
11 is slipping away from John Barnaba. He put his prestige  
12 on the line, his prestige is the thing that is going to keep  
13 him out of jail. He can't stand jail. He told you.  
14 He has to make it stick. So for the first time in this  
15 courtroom he comes in and he says that Mamone and Burke  
16 did business of some kind, he never even says what, and  
17 Burke is Mamone's customer.

18 Is that proof beyond a reasonable doubt with not  
19 another ounce of corroboration of anything? I suggest to  
20 you, ladies and gentlemen, that it is not.

21 The prosecution is going to tell you that after  
22 Mamone spoke to Burke, Barnaba was never again bothered.  
23 There is something wrong with that logic, and that is this:

24 As Barnaba told the story, within two days after  
25 he sold narcotics to Burke, Burke came around to the used

1 tp4

2 car lot and threatened his employer with a gun and the day  
3 after that Burke went to his home and threatened his wife  
4 and children. That was in May. All through the month of  
5 June, all through the month of July, all through August,  
6 until August 20th, when Barnaba finally and supposedly spok  
7 to Mamone, not a word about Burke bothering Barnaba. Didn  
8 come around any more.

9 Sure, he didn't come around after the Barnaba-  
10 Mamone conversation. He didn't come around for three  
11 months before, either. Nothing changed when that conver-  
12 sation supposedly took place. Nobody saw Burke, except John  
13 Barnaba, and that was two days after Barnaba sold him drugs.  
14

15 There is something about the testimony of John  
16 Barnaba that it might do well to mention at this point.  
17 Every human being that Barnaba uses to allegedly connect  
18 Mamone to some kind of implied, some kind of innuendo con-  
19 nection with this case, is not in this courtroom.

20 He mentions Forbrick. Forbrick is reduced to a  
21 vegetable by a stroke.

22 Burke can't be here.

23 He mentions a guy by the name of Pat Dilacio. He  
24 is not here.

25 John Barnaba is skillful enough to make sure that  
the people that he cites can't be in this courtroom to con-

1 tp5

2 tradict him and they won't be.

3                   Forbrick. Barnaba testified to rather extensive  
4 dealings with poor Mr. Forbrick, that stroke victim. Then  
5 there comes a time back in that Beach Rose Club when  
6 Forbrick wants some money back from Inglesi. Forbrick has  
7 more problems and Barnaba goes to Inglesi and says, "Why  
8 don't you see this guy," and Inglesi is supposedly reluctant,  
9 "I don't want to see him."

10                  Butch Mamone chimes in, "That guy's okay, my wife  
11 knows his wife."

12                  Did it happen? It is ridiculous on its face and  
13 I'll tell you why, because on cross-examination John Barnaba  
14 admitted that Mamone never knew Forbrick and Forbrick never  
15 knew Mamone.

16                  Can you imagine this sinister narcotics dealer  
17 bringing a total stranger into the heart of the conspiracy  
18 even though he never knew him and the guy never knew Mamone  
19 simply because the wives supposedly knew each other?

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2                   But it was a little bit more than that. Barna  
3 ba felt that part of the case slipping away from him, so  
4 he recalls on redirect examination, "Yeah, and I saw  
5 Phyllis Mamone in the Forbricks' apartment."

6                   He doesn't tell you when, the suggestion  
7 supposing to be, I gather, that there is some relation-  
8 ship at that time between Mrs. Mamone and the Forbricks.

9                   On cross examination, what comes out? The  
10 person that he saw at the Forbricks' apartment was a young  
11 girl by the name of Phyllis Zaccollillo. Years later she  
12 becomes Mrs. Mamone. She didn't even know Angelo Mamone  
13 when he saw her at the apartment during the early 1960s,  
14 when she was there to baby-sit, because her parents  
15 lived next door to the Forbricks, and John Barnaba had his  
16 own used car lot across the street. Barnaba doesn't tell  
17 you that. He doesn't tell you that she was the baby-sitt

18                   And who can forget me saying, "John Barnaba,  
19 get up and see if you find Mrs. Mamone in this courtroom."

20                   And he didn't recognize her. He didn't  
21 recognize her sitting there. There she is.

22                   Of course, he didn't recognize her. The teen-  
23 ager grew up and became Mrs. Mamone. But he didn't  
24 tell you this. He didn't tell you that he saw her  
25 years before when she was there to baby-sit. But that's

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2 what he had to drag into this case to buttress the infer-  
3 ence that he wanted you to draw that there wa some kind  
4 of relationship that would enable Mamone to vouch for  
5 Forbrick.

6 Vouching for the guy that his wife baby-sat  
7 for 10 years before he even knew her? A man you don't  
8 know? A man who doesn't know you? Is that a reason-  
9 able doubt?

10 There is only one other statement in this case  
11 about Angelo Mamone. John Barnaba testified that he heard  
12 from Mr. Pat Dilacio that Mamone was Joe DiNapoli's  
13 partner. That came as a great shock to me, because  
14 I had been hearing a lot of testimony about somebody else  
15 being DiNapoli's partner. Didn't see it in the indict-  
16 ment, didn't hear it on the tape, didn't see it in the  
17 grand jury minutes, didn't see it anywhere, until at the  
18 end of his testimony he pops up and says, "Yeah, I heard  
19 that Butch Mamone was DiNapoli's partner."

20 So I asked him, I said, "Mr. Barnaba, you don't  
21 know, do you, whether DiNapoli has a partner?"

22 He admitted that he did not.

23 "You don't even know Joe DiNapoli, do you, Mr.  
24 Barnaba?"

25 "No, sir, I don't."

2           But he picks up from the lips of a man who is  
3         not here and can't say "I never said it," who can't be  
4         cross examined as to the basis of that statement, he  
5         puts the words into the mouth of a man who is not here and  
6         he brings it into this courtroom in the hope that it can't  
7         be answered -- and it can't, it can't. It is unanswer-  
8         able, because it never happened, it is not true, the man  
9         who spoke the words, if they were ever spoken --  
10        I don't know. Nobody else was there to hear it. It  
11        can't be answered. It can't be cross examined. He  
12        doesn't know.

13            "I can't say anything about it," says Barnaba,  
14        "I have nothing at all."

15            Six hours of pretrial debriefing, questioning,  
16        testimony, never mentions it. In this courtroom he  
17        pops up with a statement which somebody else supposedly  
18        said and he wants you to infer from that kind of testimony,  
19        that kind of so-called evidence, that Angelo Mamone is a  
20        narcotics dealer.

21            Ladies and gentlemen, I would hope that I have  
22        covered everything in this record about Mamone, every  
23        spoken word, every written word about Mamone. I  
24        believe that I have. But if I have omitted anything,  
25        it is through inadvertence. I know I have omitted photo-

1 gta4

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2 graphs.

3 There are some photographs that show Mamone  
4 standing around the club. There is no doubt he was  
5 there. He went there to gamble. Stasi told you  
6 he went there, just as he went to many other places.  
7 But the message I want you to take into that room when you  
8 go to deliberate is that the very least that this system  
9 requires is that a man be punished for his own acts, and  
10 before you punish a man for dealing in narcotics or being  
11 part of a narcotics conspiracy; a narcotics partnership --  
12 a narcotics business is what it is -- is that the  
13 government prove that he dealt in narcotics, if you want  
14 to believe Barnaba that he saved somebody's life, that he  
15 handled narcotics, that he financed it, that he bought  
16 it, he sold it, he traded it, he did something with it.

17 One observer wrote that the guilt or innocence  
18 of people is just too important a thing to be left to  
19 experts. We don't allow guilt to be determined by  
20 judges, even judges as fine and as honorable as Judge  
21 Duffy, we don't feed the data into a computer and ask for  
22 an answer. We gather 12 ordinary people, much like  
23 yourselves, and hope and pray that they have the wisdom,  
24 the insight and the strength to come to a verdict that is  
25 a true verdict and an honest verdict, and when you have

1 gta5

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2 I hope that you will send Angelo Mamone back to his  
3 family, because the government has not proven that he had  
4 a thing to do with narcotics.

5 Thank you, ladies and gentlemen.

6 THE COURT: All right, Mr. Marshal, take the  
7 jury out, please.

8 (The jury left the courtroom.)

9 THE COURT: Mr. Fisher, how long do you  
10 expect to take?

11 MR. FISHER: An hour and 20 minutes.

12 THE COURT: Do you want a recess? I  
13 heard someone, I can't tell who --

14 MR. FISHER: Quite possibly, your Honor.

15 If I do I will so indicate if that is all right.

16 THE COURT: Yes, sure.

17 MR. FISHER: Thank you.

18 THE COURT: Mrs. Rosner, how much time are you  
19 planning on?

20 MRS. ROSNER: At least an hour; probably more.  
21 I really object to summing up at the hour that it is  
22 going to be when Mr. Fisher finishes.

23 THE COURT: We will see when Mr. Fisher finishes.

24 MR. SIEGAL, how long do you expect to be?

25 MR. SIEGAL: About two hours or 20 minutes,

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2 either one. I mean that seriously. I would like 20  
3 minutes, but if I have to go longer I will be longer.

4 THE COURT: I am not binding you.

5 MR. SIEGAL: That's what I mean, either 20  
6 minutes or two hours.

7 THE COURT: All right. Let us take five  
8 minutes.

9 (Recess.)

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2 (In open court; jury present.)

3 THE COURT: All right, Mr. Fisher.

4 MR. FISHER: May it please the court, colleagues  
5 at the defense table, colleagues at the prosecution table,  
6 Mr. Christiano, Madam Forelady, ladies and gentlemen of  
7 the jury:

8 My client, Finnegan, is guilty. He is  
9 guilty, ladies and gentlemen, of knowing Frank Stasi.  
10 He is guilty, ladies and gentlemen, of working in the  
11 Beach Rose Social Club. He is guilty of association.

12 But he is not guilty, ladies and gentlemen,  
13 of mixing narcotics with Joe Crow, Frank Stasi, anyone at  
14 any time at any place, and he never gave any package to  
15 John Barnaba containing any narcotics at any time, at  
16 any place.

17 Association, ladies and gentlemen, is not a  
18 crime. Not only is it not a crime, ladies and gentlemen,  
19 it is a right, a right, a precious right, protected to each  
20 and every one of us under the First Amendment of the United  
21 States Constitution, the right to associate with whomever  
22 you wish.

23 That's his crime, ladies and gentlemen.

24 That's his only crime. He took numbers there.

25 That too may be a crime, ladies and gentlemen, but not

2 the one we are dealing with here. The one we are  
3 dealing with here has heavy numbers at stake.

4 Bear in mind, ladies and gentlemen, what the  
5 charges are. Bear in mind, ladies and gentlemen, what  
6 Finnegan did.

7 It is seven or eight weeks -- I guess someone  
8 here is keeping count -- that we have been here. I  
9 noticed today the birds chirping, that winter has already  
10 turned into summer, or at least spring, while we have been  
11 involved in this case. ... That's a long time. And you  
12 ladies and gentlemen of the jury are experts by now in trial  
13 law.

14 You know, you know more about a trial than any  
15 graduating law student. You have had more trial  
16 experience in the last seven weeks than most practicing  
17 lawyers in the City of New York. And so by now you  
18 have come to grasp the wonderful business it is that  
19 we are involved in here, justice. And you have begun  
20 to appreciate, we hope, the dynamic balance that is a  
21 criminal prosecution. And you have come to see already  
22 that the sole goal here is to make that table and  
23 that table equal, even, to give Finnegan an equal shot at  
24 justice. And the rules and procedures that are  
25 cherished here and that this Honor is sworn to enforce are

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2                 paired out, divided, amongst that table and our  
3                 table, so that they come up with a flat even.

4                 They go first.   A wonderful advantage.   They  
5                 go last.   Another wonderful advantage.   They have,  
6                 ladies and gentlemen, the incredible investigatorial and  
7                 prosecutorial resources of the United States Government.  
8                 Another big advantage.   And the biggest of all, they  
9                 come in here and accuse.   They make charges, and it is  
10                a lot easier to condemn, ladies and gentlemen, than it is  
11                to defend.

12                And so the defendant has two things, essentially,  
13                going for him, the presumption of innocence and the insist-  
14                ence in our courts that the prosecution prove guilt  
15                not association, but guilt, ladies and gentlemen, beyond  
16                a reasonable doubt.   They have got theirs.   They have  
17                gone first and you can bet your bottom dollar they  
18                are going to go last.   They have had access to the  
19                resources of the United States Government and they  
20                have come in here and made allegations and charges.

21                Finnegan has got nothing, nothing, unless  
22                you give it to him, because what are the words presumption  
23                of innocence, proof beyond a reasonable doubt, unless you  
24                make them work.   If you don't say to yourselves I pre-  
25                sume Finnegan innocent now, during their summations, during

2 his Honor's charge, and during the deliberations, if you  
3 don't do that he's got nothing. If you don't insist  
4 on proof beyond a reasonable doubt he's got nothing.  
5 Strip him of his rights and each and every one of us are  
6 naked, ladies and gentlemen, naked in the face of  
7 charges bought and brought by Frank Stasi and John Barnaba.

8 No man is an island. Ask not for whom the  
9 bell tolls. It tolls for thee, each and every one of us,  
10 every time the government, the prosecution, brings charges  
11 like this against anybody. Each of us in this court-  
12 room has other roles. We here, the lawyers, are advo-  
13 cates. We advocate a cause. We fight for our  
14 clients. Mr. Curran and Mr. Phillips, the same.  
15 His Honor's role is as the sole judge of the law, and  
16 anything any lawyer says here with regard to the law  
17 you must disregard. His Honor will charge you as to  
18 the law in this case and on that subject his rule is  
19 final.

20 Now, from time to time you have noted that his  
21 Honor has permitted certain evidence in, has excluded cer-  
22 tain other testimony, has let certain exhibits in,  
23 has excluded certain others, and properly you may have  
24 gotten the idea that his Honor serves sometimes as a kind  
25 of filter.

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2           But, ladies and gentlemen, his Honor is not a  
3       filter for truth. Truth, ladies and gentlemen, not the  
4       truth that changes, as we will discuss later, but truth,  
5       fact, what happened, that is your province. With  
6       regard to the facts you are the Supreme Court, and when  
7       that awesome moment comes, Madam Forelady, when you walk  
8       in here and pronounce Finnegan not guilty or guilty  
9       your verdict, expressing the verdict of each and every one  
10      of you, is like chiseled in stone forever, forever, ladies  
11      and gentlemen, absolutely final.

12       What are the issues in this case? Well, first  
13      what aren't they? My personality is not an issue, Mr.  
14      Curran's personality is not an issue, Mr. Phillips'  
15      personality is not an issue.

16       The believability of Provitera, Pannirello, Prim  
17      rose Cadman, Tennessee Dawson, and I guess 20 other  
18      witnesses, is not an issue in the case I am talking about  
19      now, the case against Finnegan. Exhibits are not an  
20      issue in the case against Finnegan either. The million  
21      dollars is not an issue. And some 99 other exhibits  
22      are, again, not an issue in the case against Finnegan.

23       The issue in the case against Finnegan is quite  
24      simply put, ladies and gentlemen: can you possibly be-  
25      lieve Frank Stasi and John Barnaba beyond a reasonable

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2           doubt.

3           Now, many of us lawyers here have spoken about  
4           very important rights and no one as yet, as I recall, has  
5           mentioned the Fifth Amendment. And I am not now about  
6           to expound on law. As I have indicated, that is his  
7           Honor's sole province. But I talk about this in terms  
8           of my discussion of the unbelievability of Stasi and  
9           Barnaba.

10          When the people who fought for this country  
11          got together and wrote up a Constitution they knew of some  
12          pretty terrible abuses that were carried on in the name  
13          of justice. They knew how people used to be tortured  
14          to get, quote, the truth. They knew about the rack and  
15          the screw. They knew all about that, ladies and gentle-  
16          men, and that's why they said no one can be compelled to  
17          give testimony against himself.

18          Why? Well, first of all, it is a pretty  
19          barbaric thing to do. But, secondly, and most important,  
20          what comes out of that kind of an interrogation,  
21          ladies and gentlemen, is by definition inherently worthless.  
22          You can't put a gun to someone's head and say "Tell  
23          me what I want to hear" and rely on it beyond a reasonable  
24          doubt. But that's precisely what happened with  
25          Stasi and Barnaba.

1 jha

4916

2 On the night of the 22nd of May, 1973 new,  
3 modern, but just as effective techniques of torture  
4 were employed on Frank Stasi. The arrest was planned  
5 for that very purpose. Catch him when no one else is  
6 looking and arrest him. Did they bring him to a court,  
7 normal procedure, where he is arraigned? Do they  
8 ever attempt to really make a case? No. They bring  
9 him directly to an office in the Federal Plaza, where he  
10 meets Mr. Rogers, chief of the City of New York prosecutor  
11 office in narcotics, Assistant District Attorney Richard  
12 Miller, and about three other policemen. And there he  
13 is, Stasi against the world, and they say, "Frank,  
14 you are in a lot of trouble. You are in a whole lot of  
15 trouble, Frank. We've got you good.

16 "You know what a direct sale case is, don't  
17 you, Frank? We have got pictures, Frank. You know  
18 what a direct sale case is.

19 "You know, Frank, that you won't see the Parole  
20 Board for 30 years. You are 52 years old now, Frank.  
21 Are you going to live long enough, 82, to see the Parole  
22 Board? Your chances, Frank, are 99 to 1 against you.

23 "What do you say, Frank? Are you going to  
24 tell us what we want to hear?"

25 And Stasi is a man of incredible resiliency,

1 jha

4917

2 ladies and gentlemen. Not until the ghost of Christmas  
3 past walked into that room, not until that moment did he  
4 say yes. There is Allie Boy as big as life, the man he  
5 gave a pound of narcotics to, the man who beyond any ques-  
6 tion of a doubt will put him away forever. And when  
7 Allie Boy walked into that room the decision, ladies  
8 and gentlemen, was made. "I'll tell you whatever you  
9 want to hear."

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4B 2 He had to produce. I am not just talking about  
3 motivation, ladies and gentlemen. That's beyond question  
4 Motivation, however, to lie is what I am talking about.  
5 He had to produce numbers.

6 Do you think for a minute a man like Stasi is  
7 going to be given away in a direct sale case? It probably  
8 took two, three, probably a year or so to make. For one  
9 person, for two people, for three people, for four people,  
10 for the whole courtroom, he has got to produce numbers.

11 "So now, Mr. Stasi" -- and I am quoting from what  
12 he was told -- "you are going to ride or fall by how you're  
13 going to perform for Frank Rogers."

14 What a beautiful word "perform." They don't say,  
15 "Now you are going to ride or fall by how truthful you are,"  
16 do they, "by what you in fact truthfully know." No, no.  
17 Perform, ladies and gentlemen, performance is what you got  
18 because perform is what they asked for. You don't have to  
19 perform the truth. You tell the truth. Scripts, plays,  
20 theatrical presentations are performed.

21 "If you have done" -- I am quoting again -- "a  
22 terrific fucking job, it may not take long, if you know the  
23 right people and do the right things, some day, some way,  
24 Rogers is going to wipe your slate clean, if you know the  
25 right people, if you do a terrific fucking job, if you do

1 hp2

2 the right things, if, if, if you produce numbers. But" --  
3 and I am quoting again -- "if you don't you still owe us  
4 two felony convictions, you owe us your life."

5 When Mr. Siegel referred to that terrible deal  
6 made by Dr. Faust it was funny, but it's accurate. Stasi  
7 sold his soul because his life was at stake.

8 "If you don't come through" -- I am  
9 quoting again -- "it's an A felony, Stasi, the Big House."

10 He knew what the Big House was. . The Big House  
11 is prison.

12 But, on the other hand, spend a couple of months  
13 with us, maybe no broads, spend a couple of months with us,  
14 and at the end there is a plane ticket and a pot of gold."

15 Now, ladies and gentlemen, he is performing not  
16 only for the rest of his life, but for a pot of gold too.  
17 Were they buying the truth, ladies and gentlemen, was he  
18 selling the truth?

19 The insatiable greed on the part of the inter-  
20 rogators for more and more and more must at some point in  
21 time have brought the situation where Stasi ran out of  
22 truth. He couldn't have been dealing with the whole  
23 world. And when he ran out of truth he put Finnegan  
24 in this case.

25 "I'm trying to satisfy them."

1 hp3

2                   That is no coincidence. That is no unfortunate  
3 happening. That's because no one wants you to know just  
4 how good a deal he got and that's because, ladies and  
5 gentlemen, if Stasi were to say here under "the crucible"  
6 of cross-examination "Yes, when I told the police I never  
7 mixed with Finnegan that was the truth, yes, I made it up,  
8 I was trying to satisfy them, I couldn't help myself, yes,  
9 Mr. Fisher, now you got the truth," if he said that, ladies  
10 and gentlemen, to you it would cost him the rest of his  
11 life. He sat here with an invisible gun pointing right  
12 at his brains. One snip of truth and it goes off.

13                  Now, we are used to certain inventive phrases  
14 on the part of the government. When we invaded Cambodia  
15 that wasn't an invasion, that was an incursion. When we  
16 fought in Korea that wasn't a war, that was a police action.  
17 When a special agent testifies he is not special at all,  
18 everybody is a special agent.

19                  When they use the word "truth" that has a special  
20 meaning too. Truth, ladies and gentlemen, for Frank Stasi  
21 during his debriefings was code for put people in. He  
22 admitted, as he had to, that whenever he tried to tell them  
23 someone was not involved in narcotics -- response -- "You're  
24 a liar, Frank, you're a liar, Frank, big House, the rest  
25 of your life, Frank, you're a liar, Frank."

1 hp4

2           When he put someone into this case, plane ticket,  
3 pot of gold, free pass. That's what truth meant.

4           And if you had any doubt, Mr. Phillips is to be  
5 commended, ladies and gentlemen, for his candor when he  
6 offered the government's definition of truth at the very  
7 end of the evidentiary portion of this case. Mr. Phillips  
8 offered the following that was told to Frank Stasi:

9           "All right, so we'll do the best we can. You  
10 recollect as much as you can and based on what the facts are  
11 and what you tell us, and if the truth doesn't change you're  
12 not going to be hurt by it."

13           I don't have Webster's Dictionary here handy,  
14 ladies and gentlemen, but it seems clear. Truth can never  
15 change, the truth as we understand it. As to what happened  
16 in 1970 and '71 and '72 and '73, what happened or didn't  
17 happen, it can never change. There is no time machine to  
18 go back and change it. Truth is immutable, now and forever.

2           What were they talking about when they said, "If  
19 the truth doesn't change"? They knew the code. Stories  
20 change. Scripts are rewritten. Not, ladies and gentle-  
21 men, never, truths.

22           Stasi has yet another reason to come in here  
23 and lie. Despite his lucrative narcotics profession,  
24 his numbers participation, he managed to accumulate \$40,000

1 hp5

2 in debts. \$40,000 in debts. Do you suspect for a  
3 minute that safe in his relocated position under a new  
4 name, thanks to the plane ticket, the free pass and the  
5 pot of gold given to him by our prosecution in this case,  
6 that he is going to pay any of those? So put in another  
7 40,000 into the pot of gold, ladies and gentlemen, and add  
8 it all up and see what you get.

9 Stasi came to you here a finished product, the  
10 finely-honed diamond from the rough stone that you get from  
11 the mines. Since May 22, 1973, he has been preparing,  
12 busily a day, for his performance. Unending hours of  
13 questioning in preparation. Each and every question put  
14 to him on direct examination, ladies and gentlemen, by his  
15 own admission, gone over with Mr. Phillips two to three  
16 times a week for three weeks.

17 Finally, ladies and gentlemen, he was told to  
18 "memorize the truth."

19 If I asked any one of you to tell me what you  
20 did two years ago with regard to a certain event in your  
21 life would you have to memorize, ladies and gentlemen?  
22 Couldn't you think about it, recall what happened, and come  
23 in here and tell us about it? Would you need a script if  
24 you were telling the truth?

25 We are dealing with a narcotics dealer, we are

1 hp6

2 dealing with the kind of man who would mix narcotics in  
3 the same house he had his son living, the kind of man who  
4 can take all the money he made from narcotics and numbers,  
5 accumulate \$40,000 worth of debts, and blow it all on  
6 cocaine and prostitutes. That's the kind of man we are  
7 dealing with. And have no doubt, ladies and gentlemen,  
8 he lied here to you, and the stink of his perjury lingers  
9 still in this court.

10 Can you, will you, possibly ever believe that  
11 when he told you, "Yes, suddenly the night of my arrest  
12 I realized what a terrible life I had been leading, I needed  
13 to make amends for the horrors of my activities, I wanted  
14 to make up to the world for my treachery, that's why I  
15 decided to cooperate," can you believe that, ladies and  
16 gentlemen, that that is what was motivating him? That's  
17 what he told you, under the same oath he told you everything  
18 else.

19 He decided to cooperate when Allie Boy walked  
20 in that room and he realized 99-to-1 was an understatement.  
21 That's when he decided to cooperate. And that's why he  
22 decided to cooperate. If he were let back on the streets  
23 it would take him about 20 minutes to find his next con-  
24 nection.

25 He told you no promises had been made. That

1 hp7

2 was on direct examination. No promises had been made.

3 "What do you call a plane ticket? What do you  
4 call a free slate? What do you call a pot of gold?"

5 "Oh, I didn't remember that, I didn't remember  
6 that. I didn't believe it either. No, I confessed my  
7 life away relying on a promise I didn't believe."

8 You know, truth sometimes slips out, and it did  
9 in this case. At page 590 of the record I asked him,  
10 "Stasi, did there ever come a time when you stopped lying  
11 to the police?"

12 Answer, "I did, and I did not."

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2                  He will never stop lying, ladies and gentlemen,  
3                  as long as he lives.

4                  But with regard to Finnegan, there is yet a  
5                  further motive. He and Finnegan were stewards in the  
6                  Beach Rose Social Club. They depended for their liveli-  
7                  hoods, at least Finnegan did, on tips.

8                  Stasi came in and had a small numbers operation  
9                  going and he was making money from that. Suddenly Finnegan  
10                 decided to take numbers, too. That sort of clamped in on  
11                 Stasi's operation, especially when one day a cabdriver  
12                 comes to the card game, which went on just about every  
13                 day, and handed someone a bill with a number on it and the  
14                 number hit for \$24,000 and Finnegan's reward, because he  
15                 was the one who placed the bet, not Stasi, was \$4000,  
16                 \$4000 Stasi would have had if it had not been for Finnegan.

17                 Now, I am not going to review in excruciating,  
18                 torturous detail every word that Stasi said about Finnegan,  
19                 because I think it all boils down to the central question,  
20                 can you believe that he and Joe Crow and Finnegan mixed  
21                 narcotics in Bloomfield, New Jersey? And if you can't  
22                 believe that, ladies and gentlemen, you have got to  
23                 conclude a lie of that enormity colors everything else he  
24                 said.

25                 A couple of weeks ago I was home lying right

1 tp2

2 flat on my back in the living room and I had my hands out.  
3 My four-year-old son with a big grin on his face comes up  
4 to me and he says, "Daddy, close your eyes and keep your  
5 hands down."

6 I said okay. I closed my eyes, I kept my  
7 hands down and I feel him about to pounce on me, so I grab  
8 him quickly and prevent a disaster, because he's a big kid.

9 And he said, "Daddy, how come you knew that I  
10 was going to jump on you?"

11 I told him, "Ari, everytime I am lying on the  
12 ground with my hands out and you come over with a big grin  
13 and you say, 'Daddy, close your eyes,' you jump on me and  
14 that's how I knew."

15 Ladies and gentlemen, that's how you know Stasi  
16 is lying, because everytime he opened his mouth about  
17 Finnegan he lied, everytime.

18 Three separate occasions before he walked in  
19 this courtroom he told the truth, "I never mixed with  
20 Finnegan, never, ever."

21 You recall I gave him the tape recorder and the  
22 earphones because he didn't recall, you see. He has a  
23 terrific recollection, ladies and gentlemen. You know,  
24 there is an epidemic disease going on among the prosecution  
25 witnesses here called in Latin selectivous recallus.



1 tp3

2 He remembers everything that is helpful to them  
3 and has amnesia when it is helpful to the defendant.

4 "I don't remember saying I never mixed with  
5 Finnegan," a passing mental cramp, ladies and gentlemen.  
6 When he heard his own voice saying the magic words of truth,  
7 the shock almost pulverized him.

8 What were the circumstances of that? He wasn't  
9 here in front of a lot of people, he wasn't in a room  
10 being pressured; he was out in a phone booth calling in to  
11 one of the policeman Allie Boy, as Stasi, our wonderful  
12 crime fighter, is out there fighting crime. He calls in  
13 to check up with the police and says, "By the way, Finnegan  
14 never mixed."

15 What reason could he have for lying then and under  
16 those circumstances? He didn't even know he was being  
17 recorded.

18 The truth slips out, ladies and gentlemen, when  
19 you are not prepared to perform. He didn't have a script  
20 he didn't have two to three weeks with Mr. Phillips to work  
21 it all up at that time, he had the truth.

22 "I was confused," that is another disease of  
23 epidemic proportions, ladies and gentlemen, confusion.  
24 How could he be confused about mixing three kilograms of  
25 narcotics? How do you get confused about something you do

1 tp4

2 for \$2000? How do you forget the stench of the narcotics  
3 in your nose and everyone there with you? You don't forget.  
4 You are not confused, you are a liar.

5 The second time he tells the agents, again,  
6 Finnegan never mixed. Stasi, "At this time I was covering  
7 up."

8 He can't even get his excuses straight, "I was  
9 confused, now I am covering up."

10 A third time -- three separate occasions, ladies  
11 and gentlemen. Bear that in mind, three separate occasions.  
12 "Finnegan never mixed with me. I was covering up trying  
13 to protect poor Finnegan, trying as hard as I could to keep  
14 him out of this terrible case, doing everything I could to  
15 keep the government from going after him."

16 Really, Mr. Stasi? Is that why in the same  
17 breath you told him you heard that Finnegan mixed? Is that  
18 going to help him with the government, telling them you  
19 heard that Finnegan mixed narcotics? Is that going to  
20 protect him from a case like this? You're a liar, Stasi.

21 He wanted Finnegan in, ladies and gentlemen,  
22 but at the same point in time he remembered two separate  
23 occasions before, "Finnegan never mixed with me." Finnegan  
24 never mixed at all.

25 "Now, I don't remember the dates of these mixing

1 tp5

2 sessions, I don't remember dates at all, as a matter of  
3 fact. I have a big problem with dates. But I know that  
4 it was the second time that I mixed with Finnegan, posi-  
5 tive.

6 "Mr. Stasi, were you always sure of that, always,  
7 always, always sure of that?

8 "Yep.

9 "No confusion this time, right?

10 "Right. Clear, crystal."

11 When interviewed in September by Torrey Shutes,  
12 the Drug Enforcement Administration special agent, it was  
13 some other time.

14 "I thought, Mr. Stasi, you always knew it was  
15 the second time?

16 "Well, I guess not."

17 The story, ladies and gentlemen, doesn't make  
18 sense. It is an insult to logic if you think about it.

19 First and foremost, bear one thing in mind,  
20 no one is a narcotics as an esthetic pursuit. This is a  
21 business operation. This is something you do to make money  
22 and lots of it. And you cut costs and middlemen wherever  
23 you can. And because it's a highrisk occupation, you don't  
24 get involved in narcotics unless you get paid very, very  
25 well. And Stasi got paid \$2000 for three hours' work

1 tp6

2 each time he mixed narcotics. And you can assume, you  
3 can know that anyone else doing it is getting his, too.

4 Now, he describes eight separate occasions when  
5 he mixed narcotics. Maybe more? Maybe more. Maybe less?  
6 Maybe less.

7 Do you remember that? At least eight. Each  
8 time he was paid \$2000. And on seven of those occasions  
9 it was a two-man operation, ladies and gentlemen. Bear  
10 that in mind. Each time it is the same amount of narcotics,  
11 three kilograms, each time it is the same amount of work.

12 You remember one time he says Lentini came over,  
13 "And we were going to replace Joe Crow with Lentini."

14 It's always a two-man job. That's all you need  
15 to do it. And you don't pay someone else to come along for  
16 no reason at all. What reason is there suddenly to thrust  
17 into this two-man job Finnegan? I'll tell you the reason,  
18 Stasi ran out of truth. It doesn't make sense. Why pay  
19 someone \$2000 or more to do what was already being adequately  
20 done by two people? It just doesn't add up.

21 Mannite used all the time. Sometimes it was solid,  
22 sometimes it was brick. But there were other times when it  
23 was brick, too; two men.

24 That brings us to John Barnaba, who in many  
25 respects is a replay of the Stasi performance.

1 tp7

2 November 14, 1972, Baranaba, direct sale case,  
3 bam, Frank Rogers' office, gangbusters. Same old in-  
4 significant matter of life, ladies and gentlemen; same old  
5 A felony, life count, the rest of your life in jail.

6                   But I must concede Barnaba is a little more eager  
7 to sell. He gets, however, the same price; a thousand  
8 dollar bail on a direct A felony case. Indicted on an E  
9 felony, a maximum of four years.

10                   But Barnaba, ladies and gentlemen, was made even  
11 more explicitly certain that he had to produce numbers.  
12 He asked Rogers, "Oh, I know what you want, quote, you want  
13 an arrest. Is that what you want?"

"No. I don't want an arrest, I want arrests.

15 "I got to tell you something, man' -- this is  
16 being told to Barnaba -- "if you don't know nothing, we  
17 can't use you."

18                   What do you think would happen if Barnaba had  
19                   said, "Well, I'm certainly willing to deal with you folks,  
20                   but unfortunately I'm really not such a major trafficker.  
21                   The fact is, I've only dealt with three people."

22 How sad. "Don't worry, don't worry, John, we  
23 will give you the free slate, we will give you the plane  
24 ticket, we will give you the pot of gold anyway. As long  
25 as that is all there is, you tried your best, John."

1 tp8

2           Do you think that kind of a conversation could  
3       have ever happened in Rogers' office?

4           Barnaba is a street-wise person. He's a life-  
5       long criminal. He knows without having to be told what the  
6       deal is. He is told anyway, though, lest the message be  
7       lost.

8           "If you're not a big buyer, we can't use you."

9           The accent, ladies and gentlemen, is not on  
10      quality, but on quantity. Rogers asks him, "How many guys  
11      do you think you can turn us on to? How many? How many?"  
12      Numbers. "How high," quoting again, "How high can you go?"

13           And Barnaba, ladies and gentlemen, is snake  
14      through and through:

15           "I'll go as high as you want. I can get any-  
16      body." And, ladies and gentlemen, Finnegan is anybody.

17           He never for a moment intended to tell the truth.  
18      He says, "I'll work with you. I'll work with you. Feed it  
19      to me. On one condition, I go free. Feed it to me."

20           Stasi is told to perform and Barnaba asks, "Feed  
21      it to me."

22           Do any of you need to be fed the truth, ladies  
23      and gentlemen? If these things happened, do you have to be  
24      fed a story and a script? Why does he use that word,  
25      "feed it to me?" He has to be cued, he has to be told what

1 tp9

2 to say and he needed time, ladies and gentlemen.

3 They ask him, "Well, what can you tell us right  
4 now?"

5 If he, ladies and gentlemen, were prepared to  
6 tell the truth, he could have said, "Well, I'll tell you  
7 right now, this is what I've done."

8 You know what he says, "I can't tell you offhand.  
9 I've got to have time."

10 - - - What does he need time for? If you are going to  
11 tell the truth, that is something you got right there and  
12 then in your head. Isn't that a fact? What does he need  
13 time for?

14 He needed time to prepare this moving spectacular  
15 performance, ladies and gentlemen. That's what he needed  
16 time for.

17 The only thing that that man said that you can  
18 believe beyond a reasonable doubt, beyond all doubt, is,  
19 "Yes, I might lie for my freedom." That's about it.

20 He, too, was a finished product; 40 to 50 hours  
21 of rehearsal, first the City agents, then the City prosecutor  
22 then the Federal agents and then the Federal prosecutors.  
23 And where does the stuff come from? It comes from a war  
24 deserter, twice convicted for narcotics felonies.

25 He gave you the same story, the Frank Stasi-

1 tp10

2 Barnaba soft shoe, "No promises were made to me."

3           Do you believe that? Do you believe a man like  
4 Barnaba? Remember, he says, "I didn't ask a single  
5 question about this direct sale case that he had on me  
6 and he told me no promises."

7           Do you believe for a minute a man like Barnaba,  
8 a street guy without a promise, without the slightest hint  
9 of what this case is, is going to proceed to confess 20 of  
10 his lives away? If you believe that, ladies and gentlemen,  
11 Finnegan have a chance in the world of justice in this  
12 case.

13           He says, "It never occurred to me that I had to  
14 produce numbers," sworn, ladies and gentlemen, the same oath  
15 he said everything else with.

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T5b 1 gtal

2 Where was he when Frank Rogers said to  
3 him, "How many guys, how many arrests, how high can you  
4 go"? Didn't that suggest numbers.

5 Take the testimony of Stasi and Barnaba,  
6 think about it, lay it side by side and you will come  
7 up with something else. Needless to say, the lies  
8 don't mesh. They are both talking about activities  
9 in the same time frame beginning in the middle of 1970  
10 and up, both talking about events at the Beach Rose  
11 Social Club.

12 Barnaba says, "I went in, I had five deliveries  
13 of narcotics, directly or indirectly, from Finnegan, and  
14 at least one of them, by the way," he says, "Stasi  
15 and Finnegan came out with a package."

16 Stasi never mentioned that. Do you think  
17 for a moment if that happened you wouldn't have heard  
18 it from Frank Stasi? Why didn't they lie better?  
19 Is that going to be the question put to you by the  
20 prosecution, "If they were liars, they would have done  
21 a better job"?

22 Thank God for those tapes, ladies and gentle-  
23 men.

24 Let me ask you this. Do you think we  
25 would have known about the pot of gold, the plane ticket

1 gta2

2 and the free pass if it weren't for those tapes? Do  
3 you think we would have known that Barnaba said to his  
4 questioners "Feed it to me" if it weren't for those  
5 tapes? Do you think they would have told you?

6 Every time they were asked, "I don't recall,"  
7 "I was confused, distraught, disturbed, tired, sick."  
8 Lying.

9 Barnaba's allegations with regard to Finne-  
10 gan are despicable. He says that about five times.  
11 Fortunately, fortunately for Finnegan because they  
12 can be clearly disproven, all occurred in 1970. At  
13 the time when he didn't know it mattered the truth slipped  
14 out again, the night of his arrest. ~~the night of his arrest~~.

15 He said, "I never did anything in 1970."

16 "What about these transactions that you say you  
17 had with Finnegan? What about those?"

18 "Oh, I was holding back."

19 The old refrain, "I was holding back."

20 "Oh, really. Trying to minimize what?"

21 "Trying to minimize my own participation in  
22 narcotics. I didn't want to look like too big a dealer.  
23 That's why I lied, I said nothing in 1970."

24 "But, Mr. Barnaba, you were told you had to  
25 be a big dealer to get your deal. You wanted to look

1 gta3

2 like a big dealer?"

3 "No, no, I was trying to minimize, I was  
4 trying to hold back."

5 "Seconds before you said you did nothing in  
6 1970, said you dealt eight or more kilos of narcotics  
7 in 1972, 2.2 pounds per kilo, some 17.6 pounds or maybe  
8 more."

9 That is 17.6 lifetimes of involvement in  
10 narcotics, ladies and gentlemen. How could he possibly  
11 be trying to minimize? The truth slipped out again  
12 and it is preserved on tape.

13 On direct examination he testifies to all the  
14 kinds of terrific meetings at the Beach Rose Social Club  
15 Club and conversations about narcotics.

16 "Was Finnegan there?"

17 "I think so."

18 "Objection, your Honor, as to what the wit-  
19 ness thinks."

20 "Was Finnegan there?"

21 "Yes, yes."

22 And what was the impression created amongst  
23 you? Finnegan was there, wasn't he, participating in  
24 the conversations, listening to them, knowing about nar-  
25 cotics activities, according to Barnaba.

1 gta4

2 Vur on cross examination he is forced to  
3 admit -- what?

4 "Well, Finnegan, yeah, Finnegan was there,  
5 but now that you mention it, he wasn't where he could  
6 hear the conversations."

7 But, Mr. Barnaba, we are dealing with  
8 liberty here, we are dealing with life. We are deal-  
9 ing with the stuff you are willing to sell your whole  
10 soul for, Mr. Barnava. Why didn't you tell us on direct  
11 that Finnegan couldn't hear these conversations of  
12 yours?

13 Ladies and gentlemen, what would you have  
14 thought had I not asked that question.

15 He testifies before the grand jury, the same  
16 oath, people just like you, lied to.

17 "Have any transactions with Finnegan?"

18 "One."

19 "One?"

20 "One."

21 One is as good as a million, as far as I am  
22 concerned, ladies and gentlemen. But ask yourselves  
23 this question; if it was one then how could it become  
24 five by the time he testifies here? And if it was  
25 five, ladies and gentlemen, how is it one?

1 gta5

2                   But most important, on the night of his  
3 arrest, John Barnaba said, "I was dealing in narcotics  
4 with people at the Beach Rose Social Club."

5                   "Who?"

6                   "Who?"

7                   He names some names. Not Finnegan.

8                   "Are those all the people?"

9                   "Yes."

10                  He names some names. Not Finnegan.

11                  "Are those all the people?"

12                  "Yes."

13                  Not Finnegan. Not Finnegan.

14                  You see, ladies and gentlemen, he needed  
15 time.

16                  "I got to have time. I got to have time  
17 to put Finnegan in the case."

18                  Ladies and gentlemen, bear in mind in this  
19 area of comparing Stasi to Barnaba they have the same  
20 kind of language code. No one ever lies, they are  
21 just confused or holding back or protecting or minimizing.  
22 No one was made any promises, they just didn't believe  
23 the promises that were made. And just like Stasi,  
24 Barnaba hasn't been sentenced yet either. And he is  
25 in a bigger pickle than Stasi, because he can still

1 gta6

4940

2 be indicted for an A felony.

3 "Mr. Barnaba, it was true when you said  
4 you did nothing in 1970, wasn't it? It was true  
5 on the night of your arrest when you said, 'I didn't  
6 deal in narcotics with Finnegan'?"

7 Did he tell you that, ladies and gentlemen?  
8 Isn't the same invisible gun pointing at Stasi pointing  
9 at Barnaba's head as well? Doesn't he know the  
10 plea-bargaining system in the State of New York demands  
11 a representation by the prosecution he did an  
12 A-No. 1 job, and he knows he's got to stick to his  
13 story or it will cost him the rest of his life?

14 They lied when they were arrested, they were  
15 lying during months of interrogation, they lied in the  
16 grand jury, they lied to the prosecutor and they lied to  
17 you, ladies and gentlemen. And as you sit here now  
18 can you know in your heart or in your mind that a  
19 year or two or three from now those guys aren't going  
20 to be on some witness stand and they are going to be  
21 asked, "Well, was it true, Mr. Stasi, that you mixed with  
22 Finnegan?"

23 "No, I was trying to satisfy them."

24 Those are his own words, "I was trying to  
25 satisfy them."

1 gta7

2                   "Is it true, Mr. Barnaba, that you received  
3 packages of narcotics from Finnegan?"

4                   "No, no, I was trying to -- I was trying to  
5 get out of a life sentence."

6                   Do you know, ladies and gentlemen, that  
7 that wouldn't happen a year or two or three from now  
8 when it is too late?

9                   You know, H. L. Mencken said, "The truth  
10 is a wonderful thing, it will always come out." The  
11 problem with it is that sometimes it comes out too  
12 late. If it comes out, five seconds after you say  
13 "Guilty," that's it. It won't help's iThat's whatn't  
14 proof beyond a reasonable doubt means a reasonable doubt mean

15                   Would this be an appropriate time, your  
16 Honor, for a brief recess?

17                   THE COURT: Yes.

18                   All right, ladies and gentlemen.

19                   (The jury left the courtroom.)

20                   THE COURT: Mr. Fisher, I am a little bit  
21 confused by your last argument. You said if anything  
22 came out to show any difference five seconds after they  
23 return a verdict nothing can be done. You know that  
24 is not the law and you know that is not the truth.

25                   MR. FISHER: If your Honor please, my

1 gta8

2 experience with motions for new trials are pretty  
3 negative, indeed, and I don't know of one which has been  
4 granted.

5 THE COURT: That is not true. How you  
6 fix it up with the jury is your business, unless you want  
7 me to.

8 (Recess.)

9 (In open court; jury not present.)

10 THE COURT: How much longer are you going  
11 to be?

12 MR. FISHER: About a half hour, your Honor.

13 THE COURT: All right. Bring back the right  
14 jury. jury. jury.

15 (Jury present.)

16 THE COURT: All right, Mr. Fisher.

17 MR. FISHER: Thank you, your Honor.

18 Here I am again. I misspoke, ladies and  
19 gentlemen, with regard to something I said and I would  
20 like to correct that. It concerned what would happen  
21 if, I think I said, five seconds after your verdict Stasi  
22 and Barnaba would finally tell the truth, and I should  
23 tell you that there are such things as motions for a  
24 new trial, but those motions for a new trial are not  
25 made to a jury like you, and five seconds after that

1 gta9

2 verdict if something like that were to come out it would  
3 never see you -- it would go to another jury with re-  
4 gard to that evidence -- ever again.

5 During the course of the course of the cross  
6 examination of some of the chemists you may have been ...  
7 wondering just what the Takamori modified spectrophotometr:  
8 analysis had to do with this case, the neutron activa-  
9 tion analysis or atomic association test of the hemo-  
10 glutenation division tests. Believe it or not, I  
11 think they have something to do with this case and that  
12 is this. There is an incredible arsenal at their  
13 command, absolutely incredible, abThere is very little ..  
14 in the world of forensic chemistry -- those are the chemistry  
15 fancy words the chemists use for chemistry designed to  
16 produce evidence in a courtroom -- that is not at their  
17 disposal, and the sleight of hand, ladies and gentlemen,  
18 in terms of the corroboration in this case, again, the  
19 prosecution is to be commended.

20 Clearly with witnesses like Stasi and Barnaba,  
21 someone has to get the idea proof beyond a reasonable doubt  
22 is not going to be met on their unsupported stories.  
23 Something has to be done to shore them up, to support  
24 them. And so the government comes in here with this  
25 nonsense, I submit, regarding Stasi's apartment.

1 gtal0

2 ----- You know, it is as if I were to come before  
3 you and say, "Ladies and gentlemen of the jury, last  
4 night I had dinner with a ghost and to prove it here is  
5 the plate.

6 ----- What does that prove? Yes, I had dinner.  
7 The question is, with whom?

8 ----- No one in this courtroom denies for a minute  
9 that Frank Stasi dealt in narcotics, ladies and gentlemen.

10 The question is, with whom?

11 You know, this prestidigitation, this magical  
12 act the government put on, is really wonderful. Look  
13 carefully at the left hand, ladies and gentlemen, while  
14 the right hand is up to all kinds of devious maneuvers.

15 After all, what do they prove by showing that  
16 Frank Stasi mixed narcotics in his own home? The  
17 allegation as to Finnegan is did he mix narcotics in  
18 Bloomfield, New Jersey with Joe Crow in his apartment.  
19 Where is this fancy vacuum cleaner? Where are the  
20 tests with regard to Bloomfield?

21 I went into Frank Stasi's apartment I took  
22 a vacuum cleaner, I sucked all the powder up, I submitted  
23 it to the most advanced chemical analysis known to mankind  
24 and I have concluded beyond all reasonable doubt,  
25 beyond a reasonable degree of scientific certainty, it

1       gtall

2       is narcotics.     Wonderful.     Why didn't they do that  
3       in Joe Crow's apartment, where it counts?

4              Suppose they had gone to Joe Crow's apart-  
5       ment.     Remember all the paraphernalia that was  
6       supposedly there?     If Finnegan were mixing narcotics,  
7       his hands would have touched the paraphernalia and they  
8       could have found the paraphernalia and there could have  
9       been a fingerprint.

10             If his fingerprint were on paraphernalia in  
11       Joe Crow's apartment, ladies and gentlemen, you would  
12       have something, something you could rely on, the kind  
13       of stuff that makes for proof beyond a reasonable doubt.

14             You know, a reasonable doubt, ladies and  
15       gentlemen, is found not only on the evidence adduced,  
16       but on the lack of it.     Where is it?     Why isn't  
17       it here?

18

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2 Years of surveillance, just about, in front  
3 of the Beach Rose Social Club. Wonderful, ladies and  
4 gentlemen. More look at the left hand while the  
5 right hand is busy. Naturally Finnegan is seen in  
6 pictures in front of the Beach Rose Social Club. Why  
7 isn't he pictured, ladies and gentlemen, carrying a  
8 package, like Barnaba says he did? Where is that?

9 Not one part per millionth of corroboration  
10 with regard to Stasi's story, not one. This is not  
11 a situation where you couldn't get it, ladies and  
12 gentlemen. If there were anyone close to Finnegan, it  
13 was Frank Stasi. They worked in the Beach Rose worked in  
14 Social Club every day together. If what Frank Stasi  
15 said about Finnegan were true it would have been absolutely  
16 easy to go up to Finnegan wired, as he did, not with  
17 Finnegan, wired, and get Finnegan in an inculpatory  
18 conversation about narcotics. They are every day  
19 together. They are as close as this if they are dealing  
20 and mixing narcotics, ladies and gentlemen. How hard  
21 could it have been? Could Finnegan possibly have  
22 been suspicious of a man he worked with every day of his  
23 life, a man he mixed narcotics with? If that were  
24 true it would be here, ladies and gentlemen.  
25 But Stasi couldn't try to talk to Finnegan

1 jha2

2 - about narcotics wired, because if he did Finnegan would  
3 have made the natural and appropriate response, "What  
4 are you talking about, Boo-Boo? I don't know what  
5 you are talking about," and it would be there, ladies  
6 and gentlemen. Stasi couldn't afford it. The  
7 prosecution couldn't afford it. If it were true it  
8 would be here.

9 Barnaba, ladies and gentlemen. Where, oh,  
10 where is the corroboration to support Barnaba's testimony.  
11 Eleven months he was out on the streets wired for sound,  
12 crime fighter U.S.A., 20 or more times, full access to  
13 the investigative resources of the City of New York or the  
14 and the federal government, and from all of that ladies and  
15 gentlemen, we have a tape recording.

16 Now, the first thing that ought to be com-  
17 mented about with regard to the tape recording is the  
18 simple fact we did not hear about it on direct testimony,  
19 the kind of desperate lunge the prosecution may make when  
20 it sees the credibility, believability of its witness  
21 dwindle in front of its eyes.

22 Ask yourself this: how come a tape recorder?  
23 Now, the government has what they call Kel transmitters.  
24 Those are things that broadcast the conversation to  
25 someone who is monitoring it, so that we don't just have

jha3  
the testimony of the man with the machine, we have someone who is listening, and it can be broadcast, if you will remember the testimony from one of the scientific experts, to a number of different receivers. You could have four people to the conversation. Why use the tape recorder with that wonderfully convenient on-off switch in the pocket, ladies and gentlemen? Why the microphone right near your shirt able to create static, ladies and gentlemen, so what is truly being said isn't recorded?

But I say to you take the tape in the light, the strongest possible way the prosecution would want you to have it. Now, one of you jurors never looked at that transcript as you listened to it. The submission is first, of course, that the tape is inaudible.

But take it just as the government would have you have it, ladies and gentlemen. The defendant Finnegan is perfectly pleased to do that, because here is the most absolutely convincing proof of his innocence right on the government's own papers. These things sometimes creep in by mistake.

Remember, this is a two-part situation. First Barnaba says, "On November 22, 1973 I had a conversation with Finnegan. Later, Finnegan not present, I

1 jha4

2 spoke to Gigi."

3 So needless to say, as Finnegan's lawyer,  
4 I speak to you only with regard to the conversation Barnaba  
5 says he had with Finnegan.

6 Barnaba says, "You don't know if he has  
7 anything, huh?"

8 Finnegan, "No, I got no idea at all."

9 Barnaba, "If you had you would know, huh?"

10 Barnaba, "Yes. He must be in the bar.

11 Let me look."

12 Ladies and gentlemen, we have had seven weeks  
13 of expert testimony about narcotics and we have learned that  
14 there are many words to use for narcotics. There  
15 is stuff, goods, merchandise, shirts, kilos, quar-  
16 ters, heroin, H, horse, almost an unending list, smack,  
17 smek. Why didn't Barnaba say to Finnegan, "Hey,  
18 Finnegan, does he have any smek, does he have any heroin,  
19 does he have any narcotics, does he have any H, does he  
20 have any goods or merchandise?"

21 Why doesn't he use a word that means nar-  
22 cotics? Why does he use the word "anything"? Because  
23 anything can refer to anything can refer to anything,  
24 ladies and gentlemen. He wasn't there out on a social  
25 call. He was trying to bury that man. Why didn't

1 jha5

2 he? If it is true, if it is true that in 1970 he  
3 dealt five different times with Finnegan, what is he  
4 worried about? That is a man you can talk to in plain  
5 language, isn't it?

6 But it is not true, ladies and gentlemen. He  
7 never gave Barnaba a package of anything. If he did  
8 you would have seen it on that transcript. "Hey, has  
9 he got any heroin?" or the like.

10 You know, the proof in the pudding lies in  
11 some of the testimony of Stasi. You know, Stasi was put  
12 in this case by Barnaba. Barnaba made a case on Stasi  
13 and Stasi is the result, and Stasi said, "You know, Barnaba,  
14 came up to me." He didn't know Barnaba was working  
15 for the police at the time. He said, "Barnaba came  
16 up to me and said, 'Hey, do you have any narcotics?'"  
17 He didn't say, "Hey, Stasi, you got anything?"  
18 He said, "Hey, you got any narcotics?" because  
19 with Stasi, a narcotics dealer, that is a very safe  
20 question.

21 With Finnegan, a numbers bettor, that is not  
22 a safe question.

23 Ladies and gentlemen, SOS, same old stuff, pure  
24 Barnaba. Remember the call to poor Tolopka? "Hey,  
25 you got any stuff?"

1 jha6

2 Referring to what? Jewelry. This is his  
3 modus operandi, ladies and gentlemen, the most treacherous,  
4 snake-like individual who ever, ever disgraced a witness  
5 chair.

6 I give it to you, ladies and gentlemen. Take  
7 the transcript like they want you to read it. It  
8 spells innocent.

9 Excuse me.

10 (Pause.)

11 MR. FISHER: - Mr. Curran on redirect examina-  
12 tion said to Barnaba, "Mr. Barnaba, did you ever intro-  
13 duce Mr. Casella, Allie Boy, to anyone you didn't believe  
14 was dealing in narcotics?"

15 "No."

16 Obviously, then, Mr. Casella was introduced  
17 to anyone Barnaba thought was dealing in narcotics.

18 If Mr. Casella had been introduced to Finnegan  
19 don't you think you would have heard about it? And if  
20 he wasn't, why - not? Simple. Because Finnegan never  
21 dealt in narcotics.

22 With liberty, with life, with freedom, with  
23 justice at stake, ladies and gentlemen, you can't go on  
24 totally unsupported testimony of people like this, whose  
25 stories were bought, contrived, prepared, rehearsed, with

1 jha7

2 pots of gold, plane tickets and free passes. You have  
3 got to insist on more. - You have got to insist on  
4 proof beyond a reasonable doubt.

5 All the surveillance of the Beach Rose Social  
6 Club besides establishing what what we were perfectly  
7 willing to tell you about in our opening, ladies and  
8 gentlemen, was quite simply that Finnegan worked as a  
9 steward in the Beach Rose Social Club.

10 And by the way, something else. Finnegan  
11 drove a 1964 Rambler. This is in the year 1972. If  
12 he is a narcotics dealer, ladies and gentlemen, he is  
13 either very shrewd or very unsuccessful. or it is otherwise  
14 kind of car the guy who works for tips as a steward, for tips  
15 taking on occasion numbers, is likely to have, not Stasi's  
16 big, beautiful Buick or Barnaba's Cadillac

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6B 2 I am just about through. Each summation that  
3 a lawyer gives, to paraphrase some remarks made by Justice  
4 Jackson, a Justice of the Supreme Court, and one terrific  
5 trial lawyer before that, each summation a lawyer gives  
6 in a case like this is actually one of three. There is the  
7 summation I gave last night at home to my wife. There is  
8 the one I am giving to you here. And the best one of all  
9 is the one I am going to wish I had given right after I hear  
10 one of these gentlemen sum up, because I have tried to  
11 anticipate what they are going to say, but frankly, I don't  
12 think I am in a position to match my ingenuity against  
13 theirs at this time.

14 And so if they come up with an argument that I  
15 haven't anticipated please don't think I ignored it. I  
16 can't address myself to everything. We would all go stark  
17 raving mad here if I did.

18 You as a fair jury have to analyze, argue,  
19 respond and resist an argument until you are sure it makes  
20 sense. I will give you an example. The government is  
21 very likely to argue in summation, "Well, Barnaba and  
22 Stasi are indeed terrible, terrible people, but whom are  
23 we supposed to have in a case, who is going to give you  
24 the inside story on a narcotics conspiracy, priests,  
25 Senators?"

1 hp2

2 Ladies and gentlemen, reject that. How would  
3 you feel if I called in Finnegan's defense a man who would  
4 say, "No, Finnegan was never in Bloomfield, New Jersey,  
5 no, Finnegan never handed anything to John Barnaba."

6 That's direct.

7 Cross. "Have you received anything for your  
8 testimony?"

9 "Yes, about a half-million dollars."

10 "Where are you going to go after this?"

11 "I am going to be relocated. By the way, someone  
12 has a gun pointing at my wife's head."

13 Would you believe it? And we don't have a burden  
14 here. It's their burden of proof beyond a reasonable  
15 doubt. If you won't believe it from us how can you believe  
16 it from them? This is supposed to be fair, ladies and  
17 gentlemen, equal, same level.

18 Worse, they don't, ladies and gentlemen, have to  
19 rely on Barnaba and Stasi. They never did. They could have  
20 relied on evidence, ladies and gentlemen, not words, not  
21 stories, not scripts, evidence. There could have been some  
22 fingerprints. There could have been some samplings from  
23 Joe Crow's apartment. There could have been some tape  
24 recordings on which Finnegan says, "Yes, I will deliver you  
25 a package." They didn't have to rely on this stuff. They

1 hp3

2 chose to rely on it and I submit you have to reject it.

3                   A clever argument might be raised as well.  
4 Frank Stasi was known as Boo-Boo or The Boob, and there  
5 is a lot in a name, ladies and gentlemen, the prosecution  
6 might argue. And so Stasi is too stupid, too dumb,  
7 doesn't have the mental equipment to come in here and make  
8 up a story.

9                   Ladies and gentlemen, first of all, they had a  
10 whole lot of time to prepare. Secondly, ladies and gentle-  
11 men, Stasi got a whole lot of reason and desire to do it.  
12 And third, ladies and gentlemen, the truth is Stasi is not  
13 all that dumb.

14                   Remember, there he is sitting in Rogers' office  
15 on the night of his arrest, his whole life fleeting in front  
16 of him, 99-to-1 against him for the rest of his life in  
17 jail, and he has the presence of mind to lie right through  
18 his teeth. Under those circumstances, if he can lie there  
19 is there any doubt that he could be lying here? He has the  
20 mental equipment to commit perjury, ladies and gentlemen,  
21 and that's just entirely what he did.

22                   Why didn't they lie better? There wouldn't be  
23 these terrible inconsistencies. There wouldn't be these  
24 terrible inconsistencies, ladies and gentlemen, if there  
25 weren't the tapes. The tapes lock them in.

1 hp4

2 During your deliberations, please, we are entitled  
3 to a jury of twelve. That means each and every one of you  
4 have to come to your own determination. Don't give up an  
5 honest belief in your opinion merely because you are out-  
6 numbered, if that be the case. Stick to your guns, because  
7 that is what justice is all about. This wonderful thing,  
8 the jury system, won't work unless that is precisely what  
9 happens.

10 This has been a long trial and I am very obviously  
11 a very big person and my gestures tend to get exaggerated  
12 and if I have offended you with those, I am sorry. But,  
13 please, don't take that out on Finnegan?

14 In the opening many, many weeks ago I told you  
15 all that happened in this case so far as Finnegan is con-  
16 cerned was he took numbers and he worked at the Beach Rose  
17 Social Club. I told you that before we ever heard a word  
18 of this stuff.

19 I told you something else too. Let's have no  
20 more sleight-of-hand and magic. Refer to the basic laws  
21 of mathematics. Zero plus zero equals zero, not one,  
22 not two. Zero times zero still equals zero. Proof beyond  
23 a reasonable doubt, ladies and gentlemen, with Stasi equals  
24 zero, with Barnaba equals zero.

25 You may well think that it was wrong for Finnegan

1 hp5

2 to spend so much of his life in a gambling club. You may  
3 think he was wrong to take numbers. You may even think  
4 it was wrong for him to associate with the people in that  
5 club. You can think it, ladies and gentlemen, but you  
6 can't convict him for it.

7 With what is at stake here, one final request.  
8 - Before you announce your verdict, before you conclude what  
9 your verdict will be as to Finnegan, test it to make sure  
10 you have found it in a proper and just way. Assume,  
11 ladies and gentlemen, that a hood had been placed on  
12 Finnegan's head from the moment you walked into this case.  
13 Assume that you were told that the name Finnegan was just  
14 made up for the purposes of this trial, so that you had no  
15 idea whatever who Finnegan was. Assume, ladies and gentle-  
16 men, that you still have no idea who he was right through  
17 your deliberations.

18 If your verdict is honest, if your verdict is  
19 based on the evidence, if you have given Finnegan the  
20 benefit of the presumption of innocence, if you have insisted  
21 on proof beyond a reasonable doubt, if you said, "Yes,  
22 what his Honor instructed us, mere association is no crime,  
23 even if you know the person you are associating with is  
24 committing one," if you follow the law, ladies and gentle-  
25 men, if, above all, you have been fair, when that hood is

2 taken off that defendant it won't matter if he is your best  
3 friend or your brother.

4 Thank you.

5 THE COURT: All right, Marshal.

6 Ladies and gentlemen, we will start at 9.30 in  
7 the morning.

8 (Jury left the courtroom.)

9 THE COURT: I have another matter which is  
10 going to start here in five minutes. So I would appreciate  
11 it if you would get out relatively quickly. In fact, it  
12 should have started five minutes ago.

13 I would appreciate it if you would be back at  
14 9.30 in the morning.

15 Mrs. Rosner, you will begin promptly at 9.30.

16 MRS. ROSNER: Yes, sir.

17 (Adjourned to March 7, 1974, at 9.30 a.m.)